

REPORTER'S RECORD

VOLUME 55 OF 65 VOLUMES

74145

TRIAL COURT CAUSE NO. F00-02424-M

THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : DALLAS COUNTY, TEXAS  
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

\*\*\*\*\*

PUNISHMENT PHASE BY THE JURY

FILED IN  
COURT OF CRIMINAL APPEALS

\*\*\*\*\*

DEC 5 2001

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On the 14th day of June, 2001, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable F. Harold Entz, Jr.,  
Judge presiding, held in Dallas, Dallas County, Texas:  
Proceedings reported by machine shorthand, computer  
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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1 P R O C E E D I N G S

2 THE COURT: Continuation of F00-02424-NM, the  
3 State of Texas versus Jedidiah Isaac Murphy. The State  
4 continues to be represented by the Honorable Greg Davis, the  
5 Honorable Mary Miller, both of whom are present in court at  
6 this time.

7 The Honorable Jane Little, the Honorable Jennifer  
8 Balido, the Honorable Mike Byck, present in court on behalf  
9 of Mr. Murphy, who is also in court.

10 May I ask you to raise your right hand.

11 (Witness sworn.)

12 MR. DAVIS: Judge, my understanding this  
13 hearing is for the purpose of 705 and 702.

14 THE COURT: My understanding.

15 MR. DAVIS: Thank you.

16 GILDA KESSNER

17 was called as a witness by the State and, after having been  
18 first duly sworn, testified as follows:

19 Direct Examination

20 By Mr. Davis:

21 Q. Please state your full name.

22 A. Gilda Kessner.

23 Q. Dr. Kessner, my name is Greg Davis. I don't think  
24 we've met before, have we?

25 A. No, we haven't.

1 Q. Okay. Dr. Kessner, you also understand the purpose  
2 of this hearing this morning?

3 A. Yes.

4 Q. Dr. Kessner, first of all, did you bring to the  
5 court your entire file on this matter?

6 A. Yes. I have it with me, and I have records that  
7 I've reviewed.

8 Q. Dr. Kessner, my understanding is that you will be  
9 asked to express certain expert opinions to this jury; is  
10 that also your understanding?

11 A. Yes, sir.

12 Q. Will you be expressing opinions on Special Issue  
13 Number 1?

14 A. Yes.

15 Q. Will you be expressing opinions in Special Issue  
16 Number 2?

17 A. Referring to mitigation?

18 Q. Yes.

19 A. No.

20 Q. With regards to the opinions that you expect to  
21 render on Special Issue Number 1, what documents, if any,  
22 have you reviewed?

23 A. I have a list here of documents that I have  
24 reviewed. I can read them out.

25 Q. I tell you what, what I'll be asking you at the end

1 of the hearing is just to get a copy of your file --

2 A. Okay.

3 Q. -- so as long as that -- that does contain all the  
4 documents.

5 MS. LITTLE: Judge, excuse me just a moment.  
6 So much of what she has is what Greg has provided to me, so  
7 it would save a lot of time if you go by the list and then  
8 see what's missing.

9 MR. DAVIS: Could I approach?

10 THE COURT: Sure.

11 Q. (By Mr. Davis) Dr. Kessner, if I can just look  
12 through that then, I may have some questions, I may not.

13 (Document handed to counsel.)

14 MR. DAVIS: Thank you.

15 Q. (By Mr. Davis) Doctor, I recognize most of the  
16 items on your list except for one, Dr. Richard Roscoe's --

17 A. There's a letter contained in the information, I  
18 believe just a brief summary. He had been a treating  
19 physician at one of the facilities, so he was acknowledging  
20 that he had been involved with Mr. Murphy.

21 Q. Okay. Doctor, who have you interviewed in  
22 connection with the opinions that you expect to render?

23 A. Jedidiah Murphy.

24 Q. On what dates have you interviewed him?

25 A. May 28th at the Dallas County Jail.

1 Q. Have you interviewed him on any other dates?

2 A. No, sir.

3 Q. How long did you interview him on May 28th?

4 A. Approximately four hours.

5 Q. Did you administer any tests to him?

6 A. No, I did not.

7 Q. And did you gather some information that you would  
8 expect to form a basis of some of your opinions?

9 A. I gained some information on his adjustment to the  
10 jail. It's -- past psychiatric history, arrest history, just  
11 background information.

12 Q. Okay.

13 A. To have a more personalized, particularized opinion.

14 Q. What information did you get from him regarding his  
15 adjustment to the jail?

16 A. He did indicate to me that he had some problems with  
17 adjusting to the -- the concept of being incarcerated, that  
18 he had attempted to hurt himself with a razor and needed some  
19 medical care for that. He was taking psychiatric  
20 medications. Having problems at one point with depression  
21 and then feeling better about how he was going to be able to  
22 handle things, so his mood was fluctuating. That he had some  
23 problems with urination, controlling that, and that that had  
24 been a problem since he had been in the jail. He had  
25 suffered from that since his first -- first foster home

1 placement, first adoption.

2 Q. So he'd had problems with urination since his first  
3 foster home?

4 A. He said that it began, I believe, when he was living  
5 with the Tolars, that he started having some problems with  
6 that, urinating in front of others.

7 Q. Any other problems specifically relating to his  
8 incarceration that you can recall? And you're referring to  
9 some notes. Would your notes more fully detail whatever  
10 problems that he gave to you?

11 A. Yes, whatever information he had given me, plus I  
12 also reviewed incident reports from the jail.

13 Q. Okay.

14 A. Which would have detailed any significant incidents.

15 Q. Okay. I believe you told us he also gave you a  
16 psychiatric history, treatment of any sort of psychiatric  
17 problems he had experienced; is that right?

18 A. We talked about his admissions and types of symptoms  
19 that he had.

20 Q. What did he say to you? What did he tell you?

21 A. He attributed a lot to it substance abuse, early  
22 upbringing. We talked about some of the diagnoses that he  
23 had been given in the past. And as I said, some of the  
24 symptoms and what he felt those meant.

25 Q. Okay. He relates some of this to his substance

1 abuse. What history of substance abuse did he give to you?

2 A. He indicated that he mostly had abused alcohol, that  
3 he had taken some sleeping pills once on an overdose attempt.  
4 I'd have to look at my notes specifically to see if he  
5 admitted to -- I think probably a sampling of marijuana, but  
6 alcohol was his drug of choice.

7 Q. So he admitted using alcohol. Did he give you a  
8 starting date for the use of alcohol?

9 A. I think it began excessive at age 14, probably some  
10 introduction earlier than that I believe, but that's my  
11 memory. I'd have to look in my notes specifically.

12 Q. What about the details of his use of marijuana?

13 A. I'd have to find that.

14 Okay. Other drugs. He had tried marijuana in high  
15 school on weekends. Amphetamines when he was about 20 or 21  
16 years old. Didn't really like the amphetamines. LSD when he  
17 was around 21 or 22, maybe a total of five different times.  
18 Cocaine when he was 19 or 20 after he moved to Dallas.

19 Q. So as I understand, his use of cocaine, according to  
20 his history, was limited to the ages of 19 and 20 when he was  
21 in Dallas?

22 A. That's what he was indicating.

23 Q. So he's admitted to use of marijuana, amphetamines,  
24 LSD, cocaine. Any other controlled substances?

25 A. No, he's not indicating that. As I said, he's



1 indicating consistent chronic alcohol use, and then these  
2 others are later and more experimental.

3 Q. You also indicated that he expressed some problems  
4 in his upbringing; is that right?

5 A. Yes, living in two foster adoptive homes.

6 Q. Okay. More specifically, what problems did he --  
7 did he detail for you, just besides the fact that he was in  
8 foster homes?

9 A. He talked about that he was split up from siblings,  
10 that there was physical abuse, that there was domestic  
11 violence, that he felt demeaned, he felt that there was a lot  
12 of -- you know, putting down of his biological parents. He  
13 felt hopeless, ran away. His brother took up for him, was  
14 like a father to him. His sister also ran away from the home  
15 that she was placed in, so that there was enough of a  
16 disruption -- that the adoption was disrupted and they were  
17 sent back and then later on through meeting a teacher he was  
18 adopted again into the Murphy's household.

19 Q. So I understand that the problems that he told you  
20 about occurred in the Tolar home as opposed to the Murphy  
21 home?

22 A. Those specific problems, yes, and then there was  
23 sort of a different type of issue in the Murphy home.

24 Q. Did he -- did he tell you why he was separated from  
25 his siblings, his biological siblings, how he came to be in

1 the Tolar home?

2 A. Well, he and his brother were in the Tolar home  
3 together. And his sister -- let me see, I'm not sure, I  
4 can't remember her name --

5 Q. You're talking about Donnie now, his brother?

6 A. Yes, they were in the Tolar home together. His  
7 sister was placed in a different home. And he had half  
8 siblings that went with his mother at the time that she left  
9 his father.

10 Q. First of all, did he express any sort of problems  
11 prior to being placed into the Tolar home, any physical  
12 abuse, domestic violence, anything of that sort with his  
13 biologic family prior to being placed into the Tolar home?

14 A. Yes, he indicated his biological father was quite  
15 violent in the home against his mother, against the children,  
16 and also had alcohol abuse problems.

17 Q. So the biological father was violent toward the  
18 mother and the children and had problems with chronic  
19 alcoholism?

20 A. Yes.

21 Q. What sort of -- what sort of physical violence did  
22 the biological father use against Jedidiah Murphy, according  
23 to Mr. Murphy?

24 A. He just referred -- he just used the word that he  
25 beat me and my brother and sister, drank all the time.

1 Q. I'm sorry, beat -- beat Jedidiah Murphy, beat his  
2 sister, also?

3 A. And his brother.

4 Q. Your understanding, again, he's referring to Donnie?

5 A. Yes.

6 Q. Do you have the name of the sister that he was  
7 supposedly referring to?

8 A. Holly Jo.

9 Q. Holly Jo.

10 Did he give you any ages that this violence  
11 occurred? His age now, for instance, did that happen while  
12 he was ages 2 to 4, 5 to 6?

13 A. He indicated that the alcohol issues was essentially  
14 continuous in his memory.

15 Q. How about the violence?

16 A. The same. In other words, that the domestic  
17 violence in the household was a pattern.

18 Q. Did he express any -- any history of abuse or  
19 violence regarding his grandparents?

20 A. No, I don't believe he did.

21 Q. Okay. Now, I want to -- I want to go back to the  
22 Tolar home for a moment. You said that he -- he complained  
23 of physical abuse occurring in the Tolar home, right?

24 A. Yes.

25 Q. Can you give me more details of what he told you

1 there? Who directed the abuse toward him? What form did it  
2 take? Over what period of time?

3 A. He indicated that it was -- that they were  
4 physically abused by the -- there were sons in the home and  
5 they were allowed to hit them, kick them, but that also the  
6 parents would kick them, hit us, sometimes not feed us. I  
7 asked him about sexual abuse. He said, "I don't want to talk  
8 about it. They were crazy sick people. I really don't know  
9 anymore."

10 Q. That was his quote to you?

11 A. Uh-huh. Here he indicates that Donnie was 8 years  
12 old at the time. I think that was when they moved into the  
13 home. But that he was built -- Donnie was bigger -- big for  
14 his age.

15 Q. Was it -- was it your understanding when he talked  
16 about being kicked and hit and not fed, that both the  
17 parents, both Mr. and Mrs. Tolar were participating in that?

18 A. He just used the word "parents," so he didn't  
19 differentiate. Locked in the bathroom.

20 Q. He was locked in the bathroom?

21 A. That's one of the things he indicated, yes.

22 Q. Anything else regarding abuse? Was he -- I know  
23 that he's detailed the physical abuse. He refused to talk to  
24 you about the sexual abuse. Any other for of abuse that he  
25 alleged occurred?

1       A.   Well, the emotional abuse of taunts about the  
2 biological parents.

3       Q.   Who was -- who was taunting him?

4       A.   He indicated that it was the parents -- I mean, the  
5 entire family, I suppose, but he didn't distinguish that,  
6 just that -- talked about my father, my mother, not feeding  
7 us, just started thinking that we were worth nothing.

8       Q.   Did he make any specific reference to what  
9 statements the parents would make to him about his parents,  
10 about his biological parents?

11      A.   No, I don't think so.

12      Q.   And that -- during the course of the taunts then,  
13 that would lead to not being fed; is that right?

14      A.   Well, I think that was part of it. And then  
15 possibly at the time they were also being beaten,  
16 intermittently.

17      Q.   Where did the beatings take place, inside the home,  
18 was that your understanding?

19      A.   He indicated that, yes.

20      Q.   You had also listed domestic violence earlier, just  
21 in kind of the first list that you gave to me. Was that in  
22 reference to what occurred in his biological home, or did  
23 that also occur in the Tolar home?

24      A.   I believe he's referring to the biological home.  
25 I'd have to look a little further. In other words, he

1 indicated there was not domestic violence between the  
2 partners in the Tolar home.

3 Q. You told us also that he gave you a history of  
4 having run away from the Tolar home?

5 A. Yes.

6 Q. What were the circumstances for that?

7 A. Basically that he and his brother would break out a  
8 window and run away, get caught, and eventually we kept  
9 running away, the police were called, we presented such a  
10 problem that they took us to an orphanage and dropped us off.

11 Q. So both he and his brother would run away. Did that  
12 occur on more than one occasion, according to --

13 A. He's indicating that, yes.

14 Q. Did he give you an approximate number, but --

15 A. No.

16 Q. More than one time?

17 A. Uh-huh.

18 Q. The police would bring him back; is that right?

19 A. Or the police would be called, yes, but eventually  
20 they just decided to end the adoption process.

21 Q. Okay. So that I understand that the decision to end  
22 the adoption process was made by the parents; is that  
23 correct? Is that the history the defendant is giving to you?  
24 Or was there some sort of governmental intervention to  
25 actually take the children out of the Tolar home?

1       A.    I believe that they were -- the records also  
2       indicate that they were -- the Tolar family said that this  
3       isn't working, we don't want to continue with this.

4       Q.    So the history that the defendant gave you was that  
5       he would repeatedly try to run away with his brother, the  
6       parents, the Tolar's, finally tired of that, and decided to  
7       end the adoption process and placed him in some sort of  
8       shelter or orphanage?

9       A.    Yes.  I really don't know why they adopted us.  They  
10       were church going -- if you looked at them, you'd never  
11       know.  My brother is still not the same.  He'll never be  
12       right.  So indicating that -- just the general chaos going on  
13       with the family at the time led to this disruption.

14       Q.    Did he tell you how long he stayed in the shelter  
15       once he left the Tolar home?

16       A.    No, but he did indicate that I think he was close to  
17       high school age when he met the Murphys, and that's when he  
18       was placed in their home.  So he was with the Tolars about  
19       five years, I think.

20       Q.    Was there -- is there something in your notes that  
21       indicates the approximate age he was when he first went with  
22       the Murphys?

23       A.    He indicates he was around 12, age 12.

24       Q.    When he went into the Murphy home?

25       A.    Uh-huh.

1 Q. Did he express any -- any problems that he  
2 experienced in the children's shelter after he left the Tolar  
3 home? Any forms of abuse, violence?

4 A. No, he didn't discuss that. He couldn't even  
5 remember the name of it, just that it was in Fruitvale.

6 Q. Okay. You also indicated that he told you about  
7 some problems that occurred in the Murphy home, too.

8 A. Uh-huh.

9 Q. Okay. If you would just -- if you could just tell  
10 me what the problems that the defendant told you about there.

11 A. He indicated that he was in the same grade as their  
12 son Matt. They made me dress like him. He got to pick out  
13 my school clothes. I was like a pet, but they were nice  
14 people, clothes, cars, they had money. I don't know where  
15 they got it from. I went from poverty to the other side  
16 quick. I was in hog heaven really if money made you happy.  
17 But by the time I got there, I had already seen too much. It  
18 was hard to call them mom and dad. I gave an effort. He  
19 refers to Mrs. Murphy as vindictive and Bob Murphy is cool  
20 until I started getting in trouble in high school and he  
21 dropped me like a rock. I left at age 18, moved to Dallas.  
22 Let's see, they talk -- she talked about -- I think he's  
23 referring to Mrs. Murphy here, talked about my dad as a  
24 drunk. If it wasn't for her, I should be thankful. I was  
25 not a happy person during that period. I was only happy



1 around my brother.

2 Q. When he's referring to his brother there, is he  
3 talking about --

4 A. Donnie.

5 Q. -- Matt --

6 A. Donnie.

7 Q. -- Donnie? Did he give you any details of boot  
8 camp?

9 A. He talked about he was there about three months.  
10 They picked cotton, busted rocks, did drill, and ceremony.  
11 You learn how to make your bed marine style. You get  
12 promoted through Alpha, Bravo, Charlie, and Delta. He says  
13 got to work in the kitchen, had no problems, no write-ups,  
14 graduated with honors. He said he loved the experience.

15 Q. Where was that boot camp?

16 A. I'd have to look at the record and see -- he  
17 didn't -- just know it was a TDCJ --

18 Q. Do you recall it being --

19 A. -- alternative --

20 Q. -- Wichita Falls?

21 A. Yes, I believe it was in Wichita Falls, in that  
22 general area. I'd have to look at the record though to be  
23 sure.

24 Q. Okay. Did you take a general medical history from  
25 the defendant when you talked with him?

1           A.    You mean in addition to psychiatric medications and  
2 things like that?

3           Q.    Yes, ma'am. More specifically, let me just direct  
4 your attention -- did the defendant ever give you a history,  
5 for instance, of having suffered from attention deficit  
6 disorder?

7           A.    No, he didn't include that.

8           Q.    He didn't?

9           A.    I don't believe he did, but I would consider that  
10 psychiatric history.

11          Q.    Okay. And you did take a psychiatric history from  
12 him?

13          A.    Talked about his treatment history, family history,  
14 suicide attempt, depression.

15          Q.    Right. So no -- no attention deficit disorder? Did  
16 he give you a history of having used Ritalin or Prozac as a  
17 child or a teenager?

18          A.    I don't believe so. I'd have to look further to  
19 make sure though.

20          Q.    Did he give you a history of having suffered serious  
21 head injuries as a child or as a teenager?

22          A.    He talked about being shot in the hand.

23          Q.    While we're there, what history did you get -- did  
24 he give you with regards to being shot in the hand?

25          A.    Reconstructive and neurosurgery on his left hand in

1 Texarkana, can't feel all his fingers anymore, shattered the  
2 median nerve, shot himself in the hand in '96 or '97, said it  
3 was before his daughter was born. He was mad at himself,  
4 tired of being a drunk. He and Chelsie had an argument.

5 Q. Did you understand that to be that that was a  
6 self-inflicted gunshot wound?

7 A. Yes.

8 Q. That it was an intentional act on his part?

9 A. Yes.

10 Q. It was not an accident?

11 A. That's what he indicated.

12 Q. Did he tell you what sort of weapon that he had  
13 used, Dr. Kessner, by any chance?

14 A. In the offense --

15 Q. The '96 when he shot himself in the hand?

16 A. I don't think he named the weapon. Or if he did, I  
17 didn't write it down.

18 Q. Okay. I guess we left off with the serious head  
19 injuries.

20 A. I asked him about the notes in the records on  
21 extreme sports and he indicated he didn't know why -- where  
22 that came from, where that information came from, but he did  
23 refer to getting drunk and riding a bucking barrel, I guess,  
24 falling off, hitting his head. He was employed in a bar on  
25 Garland Road, and it was him, another employee, and three

1 patrons who defended against a brawl that broke out. And  
2 there was -- he was hit over the head with a bar stool. And  
3 then he mentioned blackouts when he was drinking.

4 Q. How about comas? He ever list any comas?

5 A. Well, he indicated that he went unconscious when  
6 he -- he became unconscious when he was hit with the bar  
7 stool, but he regained consciousness. He didn't need to go  
8 to the hospital.

9 Q. How about learning disabilities?

10 A. I don't believe I saw anything about that in the  
11 Edgefield -- Edgewood ISD records, and I believe he indicated  
12 that. I have to look and see here. And also on the medical  
13 issue, it mentioned the bladder retention urinary problems.

14 Q. Doctor, how many times have you testified as an  
15 expert in a capital murder case?

16 A. I believe ten times.

17 Q. Were those for the defense or for the State?

18 A. For the defense.

19 Q. Do you have a list of the cases that you testified  
20 in?

21 A. Yes.

22 Q. Doctor, have you reviewed any specific pieces of  
23 literature in connection with your opinions?

24 A. Yes, I reviewed risk assessment literature, as well  
25 as some literature referring to mental illness and the prison

1 system.

2 Q. Would your file contain the titles of the literature  
3 that you reviewed?

4 A. I have a binder that has some of the information in  
5 the back, but I don't have it all with me. And some of -- a  
6 couple of articles I have in here.

7 Q. Is your binder here in court?

8 A. Yes.

9 Q. So that I suppose at the end of the -- what other  
10 information is contained in your binder?

11 A. Just articles.

12 Q. I know that you've interviewed the defendant. Have  
13 you interviewed anyone else?

14 A. No, sir.

15 Q. What -- what opinions -- I know that you read  
16 material about mental illness in -- what, in a prison  
17 setting?

18 A. In prison -- in State prisons systems, federal  
19 prison systems.

20 Q. Okay. What opinions do you anticipate expressing  
21 about that subject?

22 A. Stedman-Wright's, based on neurostatistics,  
23 approximately 8 percent of inmates have severe mental  
24 illness, another 16 percent undergo some form of psychiatric  
25 treatment at some time during their prison stay or have spent

1 the night in a psychiatric hospital, so it's around 24  
2 percent could be categorized as having severe mental  
3 illness -- either acute or chronic.

4 Q. Okay. How do you intend to relate that to Special  
5 Issue Number 1?

6 A. Basically that the prison system is prepared to  
7 accommodate for offenders with mental illness.

8 Q. Do you expect to express an opinion about whether  
9 the defendant would pose a future danger in a prison setting?

10 A. A statistical probability, and that's based on  
11 research and some specific research that's been done in  
12 Texas.

13 Q. Do you intend to express an opinion about whether  
14 the defendant would pose a future danger outside of the  
15 prison? In the community, if you will?

16 A. Essentially I think the jury has decided his offense  
17 signifies that he has been a danger in the community so we're  
18 looking at a long-term prison term.

19 Q. Do you --

20 A. I'm not going to question their decision.

21 Q. You have no reason to disagree with it?

22 A. No, I'm going to accept the details of the offense  
23 as factual.

24 Q. Do you believe that this defendant does pose a  
25 danger in the community?

1       A.    I think that he's demonstrated that he's a risk in  
2   the community with non-offending individuals.

3       Q.    So when you talk about the prison setting, again  
4   you're going to be referring to literature, the studies, the  
5   base line studies and the like to give a statistical analysis  
6   there; is that correct?

7       A.    A statistical analysis, and also -- as I said, also  
8   to discuss the prison system's capacity to deal with mentally  
9   ill offenders.

10      Q.    Doctor, do you anticipate doing any further work in  
11   this case prior to testifying on -- on or about June 27th?

12      A.    I'll probably be spending a little more time looking  
13   at the records. And I have been -- I have made an attempt to  
14   contact Dr. Ross Taylor, a psychiatrist at TDCJ, to get some  
15   specific information on numbers, percentages in the system  
16   who treat for mental illness.

17      Q.    And the records that you anticipate looking at, do  
18   you have an idea of what particular records you'll be looking  
19   at between now and the 27th?

20      A.    I'll probably look at the jail offense, incident  
21   reports, that sort of thing again just to refresh my memory,  
22   maybe some psychiatric records. I understand it's going to  
23   be a couple of weeks though.

24      Q.    Right.

25               MR. DAVIS: Judge, I believe that's all I have

1 this morning.

2 Cross-Examination

3 By Ms. Little:

4 Q. I have just one question --

5 MR. DAVIS: If we can have an understanding  
6 that before the doctor leaves, that I can be provide with a  
7 copy of her file, as well as a copy of the material in her  
8 binder.

9 THE COURT: Request granted.

10 Q. (By Ms. Little) Would it be possible that Jim  
11 Murphy was in Childress at boot camp instead of than Wichita  
12 Falls?

13 A. That's possible. I couldn't remember what it said  
14 on there.

15 MS. LITTLE: Okay. Thank you. That's all I  
16 have for now.

17 MR. DAVIS: Nothing further.

18 THE COURT: Thank you, Doctor. You may step  
19 down.

20 THE COURT: Jane, may I ask you to coordinate  
21 with your witness the documents that the State is entitled  
22 to?

23 MS. MILLER: Do you want Scott to Xerox?

24 THE COURT: Yes, if Scott is available.

25 Anything further this morning, counsel?



1 MS. LITTLE: I'll offer Defense Exhibit Number  
2 39 for record purposes.

3 (Defendant's Exhibit No. 39 offered)

4 THE COURT: The C V.?

5 MS. LITTLE: Yes, sir.

6 THE COURT: Anything further, counsel?

7 MS. LITTLE: No, sir.

8 THE COURT: The State have anything this  
9 morning?

10 MR. DAVIS: Nothing further, Your Honor.

11 THE COURT: Tomorrow morning, 9 o'clock.

12 MS. LITTLE: Yes, sir.

13 (Recess of Proceedings.)

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Reporter's Certificate

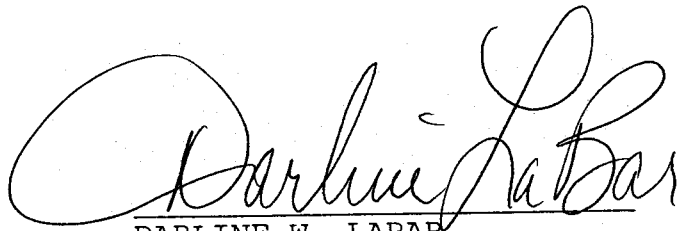
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 26th day of June, A.D., 2001.



DARLINE W. LABAR  
Official Court Reporter  
194th Judicial District Court  
Dallas County, Texas  
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

VOLUME 56 OF 65 VOLUMES

74145

TRIAL COURT CAUSE NO. F00-02424-M

THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : DALLAS COUNTY, TEXAS  
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

\*\*\*\*\*  
PUNISHMENT PHASE BY JURY

FILED IN  
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney  
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FOR THE DEFENDANT.

\*\*\*\*\*

On the 15th day of June, 2001, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable F. Harold Entz, Jr.,  
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer  
assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: Continuation of F00-02424-MM, case  
3 styled the State of Texas versus Jedidiah Isaac Murphy.

4 The record reflect lead counsel for the State, the  
5 Honorable Greg Davis, is present in court with co-counsel,  
6 Chief Prosecutor, 194th District Court, the Honorable Mary  
7 Miller.

8 Lead counsel for the accused, the Honorable Jane  
9 Little, is present in court with her co-counsel, the  
10 Honorable Michael Byck, the Honorable Jennifer Balido.

11 Let the record further reflect the defendant,  
12 Jedidiah Isaac Murphy, will be in court at all times during  
13 this hearing absent my dictating the contrary into the  
14 record.

15 Dr. Crowder, may I ask that you raise your right  
16 hand, please.

17 (Witness sworn.)

18 THE COURT: Let the record further reflect  
19 this hearing is being conducted in open court, outside the  
20 presence and hearing of the impaneled jury.

21 Mr. Davis, you may begin the interrogation of Dr.  
22 Crowder.

23 MR. DAVIS: Thank you.  
24  
25

1

JAYE DOUGLAS CROWDER

2

was called as a witness by the State and, after having been

3

first duly sworn, testified as follows:

4

Direct Examination

5

By Mr. Davis:

6

Q. Would you please tell us your full name for the

7

record?

8

A. Yes. Jaye Douglas Crowder.

9

Q. Dr. Crowder, how are you doing today?

10

A. Fine.

11

Q. Dr. Crowder, I believe you understand the purpose of

12

this hearing?

13

A. I think my findings; is that correct?

14

Q. Yes, sir, under Rule 705.

15

A. Uh-huh.

16

Q. So I'll be asking you for your opinions and the

17

basis of your opinions. Very briefly let me ask you, do you

18

anticipate expressing any opinions to the jury concerning

19

Special Issue Number 1?

20

A. Which special issue --

21

THE COURT: Future dangerousness.

22

Q. (By Mr. Davis) Future dangerousness?

23

A. Yes.

24

Q. Okay. Do you anticipate expressing opinions about

25

Special Issue Number 2, mitigation?

1 A. Yes.

2 Q. If we could, starting with Special Issue Number 1,  
3 what opinions do you anticipate rendering on that issue?

4 A. There will be some literature discussing the  
5 frequency of violence or aggression by murder defendants, and  
6 there will be basically conclusion that the odds are against  
7 serious violence in the future on the part of Mr. Murphy.

8 Q. Okay. So that again I understand, you're talking  
9 general about some studies or literature that have been done  
10 and then you'll apply that to Mr. Murphy's case and your  
11 conclusion will be that he will not pose a future threat; is  
12 that the gist of your testimony?

13 A. I can't say that he will not pose a future threat.  
14 What I can say is the odds are against it. You can't predict  
15 necessarily for one individual, what that one person will do.

16 Q. Is that -- is that in reference to his behavior in  
17 prison or outside of prison?

18 A. Both.

19 Q. Both?

20 A. I'm sorry, the opinion about the danger, that has to  
21 do with prison. It refers to his behavior or it's based on  
22 his behavior in both places. I may have not made that clear.

23 Q. So that you'll express an opinion that the odds are  
24 against him actually posing a future -- future threat or  
25 danger inside a prison?

1 A. Correct.

2 Q. Will you express any opinion about whether he will  
3 pose a threat or a risk outside of a prison in the future?

4 A. I don't anticipate being asked that on direct. You  
5 know, of course you can cross-examine me about that.

6 Q. Have you formed an opinion on that subject?

7 A. Yes.

8 Q. What is your opinion?

9 A. Well, on the outside, I would be concerned about  
10 him.

11 Q. If we could,, turning to Special Issue Number 2,  
12 what opinions do you anticipate rendering?

13 A. Mr. Murphy did have a difficult upbringing in which  
14 his mother basically abandoned him and some of his siblings  
15 in favor of other siblings. He grew up in three different --  
16 well, actually four different households at various times.  
17 He witnessed some violence between his father who is an  
18 alcoholic and his mother. So those things would kind of  
19 play.

20 Further, he has some genetic predispositions to  
21 alcoholism and to -- probably to impulsiveness as a  
22 personality disorder.

23 Q. Okay. So the upbringing, the four homes, the  
24 domestic violence in his biological parents' home, correct?

25 A. Yes.



1 Q. A genetic predisposition towards alcoholism?

2 A. Right.

3 Q. And impulse control difficulties?

4 A. Yes.

5 Q. And did I understand you to say also to antisocial  
6 personality disorder?

7 A. I didn't say antisocial. I said personality  
8 disorder.

9 Q. I'm sorry?

10 A. To personality disorder, but not antisocial  
11 personality disorder.

12 Q. If you could, just explain in just a little bit more  
13 detail what you mean by the term "personality disorder."

14 A. That's a category of diagnoses in DSM IV which  
15 refers to chronic maladaptive patterns of living which either  
16 cause the person discomfort or difficulties functioning in  
17 occupation, social, or other important roles.

18 Q. Do you anticipate any other history being related to  
19 the jury with regards to perhaps sexual or physical or  
20 emotional abuse suffered by Mr. Murphy?

21 A. There was some claim of that, which is difficult to  
22 confirm. He did claim that. I would anticipate sharing what  
23 that would do to a person, but I couldn't confirm one way or  
24 another whether it occurred.

25 Q. Do you anticipate any testimony with regards to

1 mental history or any sort of mental disorders he may have  
2 suffered in the past?

3 A. Yes.

4 Q. Can you tell me a little bit about that, please?

5 A. Yes. He suffers from depression with strong anxiety  
6 features. He suffers from alcohol dependence. As far as  
7 personality disorder is concerned, I would diagnosis him with  
8 narcissistic and borderline personality disorders.

9 Q. How about besides alcohol, any other opinions  
10 concerning substance abuse?

11 A. He has had substance abuse in the past which doesn't  
12 seem as extensive as the alcohol, so there is other substance  
13 abuse also.

14 Q. Who have you interviewed in connection with your  
15 testimony?

16 A. Interviewed his sister Tonya. I interviewed his  
17 mother Hope Abbott. I interviewed his sister and his  
18 brother-in-law which would be the Erwins. I think you're  
19 aware of them. I interviewed Katherine Bunts who was a  
20 teacher of his. I interviewed a couple who are both teachers  
21 named Shelnut who taught him also in school.

22 Q. Uh-huh.

23 A. I believe that's -- no, I'm sorry. I interviewed  
24 Randy Crow who is his AA sponsor as well.

25 Q. Did you test -- did you interview the defendant

1 himself?

2 A. Oh, yes, I interviewed him.

3 Q. How many times have you interviewed the defendant?

4 A. Three times.

5 Q. Just so we can kind of shortcut this a little bit,  
6 does your -- will your file reflect the dates that you  
7 interviewed the defendant?

8 A. Yes, it does reflect the dates.

9 Q. Will it also reflect the dates and the contents of  
10 any interviews you had with these other individuals?

11 A. Yes, it does.

12 Q. Have any -- any tests been run on the defendant at  
13 your direction?

14 A. Yes, they have.

15 Q. What tests have been run?

16 A. I asked for psychological testing,  
17 neuropsychological testing and MRI and an EEG.

18 Q. Who performed the psychological testing?

19 A. Robert Lovitt, L-o-v-i-t-t.

20 Q. Will your file contain a copy of his report?

21 A. I received a verbal report from him, and I don't  
22 believe there is a written report.

23 Q. When was that test performed? Recently?

24 A. No. It was probably a month or two ago.

25 Q. And in general then can you tell me what the results

1 of his tests were?

2 A. The results were consistent with my diagnosis of  
3 personality disorder basically. There were narcissistic --  
4 strong narcissistic features, borderline features. There  
5 were some antisocial features. There were -- there were  
6 indications of his acute discomfort at this time as well.

7 Q. Who performed the neuropsychological test?

8 A. That would be Monroe Kullen.

9 Q. And were they -- when were those tests performed?

10 A. Again, it would be the same time frame as the  
11 psychological testing. There is a report on that testing.  
12 It's in the -- it's in the files that you can look at.

13 Q. In particular, going back one step, exactly what  
14 psychological tests were performed by Dr. Lovitt?

15 A. He did an MMPI 2 and a Rorschach. I'm not sure if  
16 he did a Millon, also, but at least those two tests.

17 Q. All right. And what neuropsychological tests were  
18 done by Dr. Kullen?

19 A. It would have been a Halstead-Reitan, and I think he  
20 probably incorporated some other subtests that aren't  
21 technically a part of that protocol, so it was more or less  
22 at his discretion, be a whole list of procedures.

23 Q. And in general, what were the results of the  
24 neuropsychological testing done by Dr. Kullen?

25 A. There was not any evidence of central nervous system

1 damage.

2 Q. Did I understand you to say that an EEG was also  
3 performed?

4 A. Yes.

5 Q. When was that performed?

6 A. Again, similar time frame. I don't recall the exact  
7 date.

8 Q. But you recall who performed that test?

9 A. That would have been done at Parkland, as well as  
10 the MRI. They were both done there in about the same time  
11 frame.

12 Q. Can you tell me in general what were the results of  
13 the EEG?

14 A. Yes. That was considered within normal limits.

15 Q. How about the MRI? What were the results there?

16 A. There was no central nervous system pathology.  
17 There was some sinus findings and perhaps a cyst in the  
18 sinuses, but nothing in the central nervous system.

19 Q. Okay. Besides the psychological, the  
20 neuropsychological, the EEG, and MRI, were any other tests  
21 done, to your knowledge?

22 A. No.

23 Q. Did you yourself administer any tests to the  
24 defendant?

25 A. No.

1 Q. To your knowledge, has Dr. Mary Connell performed  
2 any tests on the defendant?

3 A. I think perhaps actually she did the MMPI 2 and  
4 perhaps supplied her results to Dr. Lovitt to interpret.

5 Q. Have you -- have you had discussions with Dr. Gilda  
6 Kessner about this case?

7 A. Yes.

8 Q. Can you tell me the gist of your conversations with  
9 her?

10 A. Well, we discussed -- we've discussed these issues  
11 that I've just enumerated. We discussed the childhood  
12 issues. We discussed the dangerousness issue that you're  
13 talking about. We discussed diagnosis.

14 Q. Have you had discussions with Dr. Connell as well?

15 A. Yes.

16 Q. Okay. And what issues have you discussed with her?

17 A. Of course she is mostly focused on the childhood  
18 issues and a little bit of the psychology of events.

19 Q. Has she made you aware of the opinions that she  
20 anticipates rendering?

21 A. Actually I don't think she has made me very aware.  
22 I think we're in basic agreement that this was a difficult  
23 childhood and it would predispose a person to maladjustment  
24 in adult life. And beyond that, I don't know any great  
25 detail.

1 Q. So that I understand, you did have a chance to  
2 review findings from these tests, correct?

3 A. I got a verbal report about the findings. I didn't  
4 look at the tests myself personally.

5 Q. And what other documents have you reviewed, and I'm  
6 not talking about the literature or studies necessarily, but  
7 any other documents related to this case?

8 A. I don't know if I can list them all. It's a  
9 great -- it's a great many. The jail records, the incident  
10 reports, the police reports and investigative notes, the  
11 affidavits submitted by various witnesses, the medical  
12 records from the Andrews Center, Green Oaks Hospital, Terrell  
13 State Hospital, Timberlawn Hospital. Nothing else comes to  
14 mind right now, but a great many records.

15 Q. In your --

16 A. Probation records, I'm sorry I didn't --

17 Q. Would that be from Van Zandt County, as well as  
18 Dallas County?

19 A. Yes.

20 Q. Again, your notes in your file, will they contain  
21 the contents of your interviews with the defendant?

22 A. Yes, they do.

23 Q. All the interviews, did they take place here in the  
24 Dallas County Jail?

25 A. Yes, they did.

1 Q. Do you remember in general what the dates were for  
2 those interviews? Were they done recently, within the last  
3 couple of months?

4 A. They were done no later -- I mean, no earlier than  
5 late March.

6 Q. Doctor, do you anticipate doing any further work on  
7 this case prior to your testimony later this month?

8 A. Yes.

9 Q. What do you anticipate doing?

10 A. I want to interview him one more time. There are a  
11 couple of other people I want to talk to. In addition to  
12 that, I will probably look for some other literature  
13 references.

14 Q. What is going to be the purpose of the fourth  
15 interview with the defendant?

16 A. I wanted to ask him some questions about extraneous  
17 offenses that you were intending to introduce.

18 Q. Okay. You haven't -- you haven't talked with him  
19 about that at this time?

20 A. I've talked to him about some of them, but there was  
21 one in particular.

22 Q. Which one in particular?

23 A. I understand that a woman has testified that he held  
24 a gun to her head when they were out drinking one night.

25 Q. When you've talked with the defendant in the past,



1 have you asked him to tell you about any other offenses that  
2 he may have committed?

3 A. Some of them, yes.

4 Q. Okay. Has he -- has he talked to you about an  
5 incident that occurred in Wichita Falls?

6 A. I don't believe so.

7 Q. Has he talked with you about an event that occurred  
8 to a nurse over in Arlington?

9 A. You'd have to be more specific.

10 Q. Woman's name is Cheryl Wilhelm who was abducted  
11 around noon from a parking lot.

12 A. Yes, we did discuss that.

13 Q. Okay. What's he told about that?

14 A. He said that he did not commit that crime.

15 Q. Did he talk to you about holding a knife on his  
16 common law wife Chelsie Willis?

17 A. Yes.

18 Q. What's he told you about that?

19 A. I think that he picked up a knife once. That was  
20 about it.

21 Q. Has he told you -- well, I take it up to this point  
22 he hasn't mentioned Mandy Kirl, has he, the girl who had the  
23 gun held up to her head?

24 A. We have not discussed that incident, that's right.

25 Q. Has he discussed his prior burglary convictions down

1 in Van Zandt County with you?

2 A. Yes.

3 Q. His theft conviction up here in Dallas County?

4 A. Yes.

5 Q. Has he mentioned his suicide attempt up here in the  
6 Dallas County Jail?

7 A. Yes.

8 Q. What's he related to you on that subject?

9 A. Said he was very discouraged and he wanted to die.

10 Q. Did he tell you how long he had been discouraged,  
11 the precise reason for his discouragement?

12 A. I think it was everything. It was the concern about  
13 his past actions, the mistakes he's made in his life, and  
14 undoubtedly the pressure of the trial and the possible death  
15 sentence are weighing on him, so all those things came into  
16 it.

17 Q. Okay. Has he talked with you about the incident  
18 that occurred over in the government center jail on the 7th  
19 floor when he got into a fight with the guards?

20 A. I wouldn't necessarily characterize it as a fight.  
21 He did discuss that incident, the one I think you're  
22 referring to.

23 Q. What did he tell you about that?

24 A. That he was going to be taken back to the holdover,  
25 he didn't feel he could urinate in front of other people. He

1 had not urinated that morning. Didn't have his medication.  
2 He was unwilling to go back, so he sort of passively resisted  
3 them taking him.

4 Q. What was he over there for?

5 MS. LITTLE: I'll object to this as beyond the  
6 scope of this hearing.

7 THE COURT: Sustained.

8 Q. (By Mr. Davis) Are you using that incident to form  
9 any conclusions in this case concerning his behavior in a  
10 confined setting, such as prison?

11 A. Sure, I took it into account.

12 Q. If you would then, I want to talk about that  
13 incident. First of all, why was he in the government center  
14 that day?

15 MS. LITTLE: I'll object to this, Your Honor.

16 THE COURT: Objection is overruled in light of  
17 the response of the witness.

18 A. He was talking -- I'm sorry.

19 THE COURT: Go ahead.

20 A. He was there to talk to an investigator from the  
21 defense team.

22 Q. (By Mr. Davis) Was he there to take a polygraph  
23 examination?

24 MS. LITTLE: I'll object to that as going  
25 beyond the scope of this hearing --

1 THE COURT: Sustained.

2 MS. LITTLE: -- inadmissible.

3 Q. (By Mr. Davis) Who was the investigator?

4 A. Mr. Parker.

5 Q. Bill Parker?

6 A. Yes.

7 Q. You're familiar with him, aren't you?

8 A. I've spoken to him. I know him.

9 Q. Have you interviewed Bill Parker?

10 A. I have not interviewed Bill Parker.

11 Q. You mentioned that you want to interview two  
12 additional individuals. Who are they?

13 A. One would be Matt Murphy.

14 Q. Matt Murphy.

15 A. And I'm still waiting for Mr. Murphy -- Bob Murphy.

16 Q. So you're going to talk to Matt and Bob Murphy?

17 A. Yes.

18 Q. Do you anticipate any additional tests being done  
19 prior to --

20 A. No further -- no further testing.

21 Q. And then you're going to do some additional study on  
22 literature. Is that going to deal basically with Special  
23 Issue Number 1 or Number 2?

24 A. That could deal with either. I especially am  
25 interested in some things with Special Issue Number 2 in that

1 regard.

2 Q. Can you just tell me in general what types of things  
3 do you intend to research further?

4 A. Yes. I'm particularly looking into the alcohol  
5 issue.

6 Q. In what respect?

7 A. Predisposition to aggression, loss of impulse  
8 control, poor judgment, perhaps the genetics of alcoholism.

9 Q. Doctor, where is your file? Do you have it?

10 A. It's here.

11 Q. Okay. And again, as I understand, instead of taking  
12 up time right now, as far as details of interviews,  
13 conversations, dates, that sort of thing, your file should  
14 contain that information, shouldn't it?

15 A. Yes, it does contain it.

16 Q. How -- how would I go about getting copies of the  
17 medical tests that were run on Mr. Murphy?

18 A. The EEG report, I believe, is here. The MRI report,  
19 I believe, actually Ms. Little has it or has a copy of it.  
20 I'm not sure it's right here. Take my word for it, it's  
21 normal, but --

22 Q. How about --

23 A. -- I will get that to you.

24 Q. Do you have a copy of the test done by Dr. Kullen?

25 A. Yes.

1 Q. Is that in your file?

2 A. The testing -- the testing report, not the raw data  
3 or anything.

4 Q. Then your file, would that contain some sort of  
5 notes about what you were told verbally about the MMPI 2, as  
6 well as any other neurological tests that were done?

7 A. I didn't get any verbal reports about the medical  
8 testing, the EEG or the MRI. That's all here.

9 Q. No, I'm -- I'm talking --

10 A. The psychological testing, there's not a report. I  
11 don't have any notes.

12 Q. Where would I go about getting the results of those  
13 tests?

14 A. I suppose you'd need to talk to Dr. Lovitt about  
15 that.

16 MR. DAVIS: Judge, I believe that's all the  
17 questions I have.

18 And I would ask that the Court adopt leave that we  
19 be given an opportunity to make a copy of his file and then,  
20 if we could have some understanding with counsel about being  
21 provided with the other tests that Dr. Lovitt may have done  
22 or Dr. Connell or the medical tests that may be in possession  
23 of --

24 THE COURT: I think Dr. Connell is scheduled  
25 this afternoon. We could make that inquiry.

1 MS. LITTLE: 1 o'clock.

2 THE COURT: Ms. Little, can you --

3 MS. LITTLE: Your Honor, regarding the MRI  
4 results, I did receive from Dr. Crowder's secretary a fax  
5 stating that would be the results, but it was not. So I do  
6 not have that. But I'm sure we can easily obtain it.

7 Regarding the things in the file, certainly they're  
8 here today. I don't have anything from Dr. Lovitt either.  
9 We can request that he do a written -- I don't have anything  
10 of Dr. Lovitt's.

11 THE COURT: All right.

12 MS. LITTLE: I do know that he relied on some  
13 test that Mary Connell did, but we can provide all of that.

14 THE COURT: Okay. Do you have any  
15 questions --

16 MS. LITTLE: Is there anything I left out?

17 THE COURT: Do you have any questions for Dr.  
18 Crowder of this hearing?

19 MS. LITTLE: No, sir, I'd just offer Defense  
20 Exhibit Number 40 for record purposes, which is his vita.

21 (Defendant's Exhibit No. 40 offered)

22 THE COURT: CV? Admitted.

23 (Defendant's Exhibit No. 40 admitted)

24 THE COURT: Anything further?

25 MS. LITTLE: Anything else?

1 Q. (By Mr. Davis) Let me just ask you, just because I  
2 did have a Motion in Limine, also? Do you intend -- do you  
3 anticipate -- well, first, do you anticipate providing the  
4 jury with any photographs, anything of that nature during  
5 your testimony?

6 A. No photographs, no.

7 Q. Now, this history, I take it that it's part of your  
8 testimony, you will be giving them an overall psychological  
9 history of the defendant?

10 A. Right.

11 Q. Now -- and the basis of that is going to be what  
12 you've been told by the defendant, as well as what you've  
13 been told by family members, correct? And --

14 A. And the records.

15 Q. -- and the records. Okay.

16 MR. DAVIS: That's all I have, Judge.

17 MS. LITTLE: Let me just make one other  
18 addition to the record, Judge.

19 THE COURT: Yes, ma'am.

20 MS. LITTLE: The vast majority of what Dr.  
21 Crowder has is material that the State has provided to me  
22 over the course of this trial and previous to the beginning  
23 of jury selection which are all these records that we all  
24 know about, jail, medical, jail behavior, all these  
25 psychiatric places, all these police reports. All these



1 things were provided by the State, and Dr. Crowder has all of  
2 those things.

3 THE COURT: All right. Anything further at  
4 this hearing?

5 MS. BALIDO: Yes, Judge. We -- also, we have  
6 inquired previously as to the State -- specifically with Mr.  
7 Davis, as to whether or not they plan on sending a expert  
8 over to interview the defendant. At this point they have  
9 not -- they have not told us that they're going to. And  
10 since you're going to be out of town next week --

11 THE COURT: Pursuant to the United States  
12 Supreme Court case Buchanan versus Kentucky, does the State  
13 in light of Dr. Crowder's having personally examined the  
14 defendant choose to call upon a forensic psychiatrist to  
15 examine him as well?

16 MR. DAVIS: No, sir.

17 MS. LITTLE: We would just want it to be known  
18 that if indeed that should change, that we would like an  
19 opportunity that's adequate to talk to our client.

20 MR. DAVIS: I would -- I would reserve, you  
21 know, my right to say otherwise after I've had a chance to  
22 look at his records or the tests done by the doctor and  
23 consult with someone. If they determine it's necessary, I  
24 will certainly come back to counsel and indicate that to  
25 them.

1 THE COURT: The State is so instructed and  
2 ordered to apprise the defense of their -- if they have a  
3 change of heart with regard to trial strategy.

4 MS. BALIDO: What -- I'm sorry, Judge, what  
5 our concern is that we have instructed our client not to talk  
6 to anyone that we haven't told him to talk to. And we don't  
7 want it to be a situation that whatever expert they send over  
8 there, 15 minutes after they tell us or whatever. We just  
9 want an opportunity --

10 MS. LITTLE: Because we're not doing that.

11 MS. BALIDO: We just need to be aware so we  
12 can counsel our client as to what's going on.

13 THE COURT: I would ask that the State make a  
14 timely strategic decision whether or not to engage the  
15 services of a forensic psychiatrist.

16 MR. DAVIS: Yes, sir.

17 THE COURT: Anything further?

18 MS. LITTLE: We would also request if they've  
19 already talked to someone about future danger, who views  
20 things contrary to their position, we'd like to know under  
21 Brady and due process who that person might be.

22 MR. DAVIS: I have no Brady material to  
23 disclose at this time.

24 THE COURT: Anything further? Hearing is  
25 concluded.

1 Thank you Dr. Crowder.

2 (Recess of proceedings.)

3 THE COURT: Continuation of the hearings in  
4 Cause F00-02424-NM, styled the State of Texas versus Jedidiah  
5 Isaac Murphy.

6 The State continues to be represented by the  
7 Honorable Greg Davis, the Honorable Mary Miller.

8 Lead counsel for the defense, the Honorable Jane  
9 Little, and co-counsel, the Honorable Jennifer Balido, are  
10 present in court during this hearing with the accused,  
11 Jedidiah Isaac Murphy.

12 The State prepared to continue?

13 MR. DAVIS: The State's ready, Your Honor.

14 THE COURT: Is the defense prepared to  
15 continue?

16 MS. LITTLE: Yes, sir.

17 THE COURT: Doctor, if you please.

18 MS. LITTLE: Your Honor, we offer Defense  
19 Exhibit Number 41, which I put for Darline up there, the vita  
20 of Dr. Mary Connell. The State has a copy as well.

21 (Defendant's Exhibit No. 41 offered)

22 THE COURT: Any objection from the State?

23 MR. DAVIS: No objection.

24 THE COURT: Admitted.

25 (Defendant's Exhibit No. 41 admitted)

1 THE COURT: Let the record reflect this  
2 hearing is being conducted in open court, outside the  
3 presence and hearing of the impaneled jury.

4 Mr. Davis, you may proceed.

5 MR. DAVIS: Thank you.

6 MARY CONNELL

7 was called as a witness by the State and, after having been  
8 first duly sworn, testified as follows:

9 Direct Examination

10 By Mr. Davis:

11 Q. Would you please state your full name for the  
12 record?

13 A. Yes. Mary Adene (phonetic) Connell.

14 Q. Dr. Connell, you and I have met previously, I think,  
15 haven't we?

16 A. Yes, we have.

17 Q. Dr. Connell, you understand the purpose of this  
18 hearing is to have you elicit whatever opinions that you  
19 expect to render in this case, as well as the basis for your  
20 opinions?

21 A. Yes, sir, I do.

22 Q. Dr. Connell, first of all, do you expect to render  
23 any opinions concerning Special Issue Number 1, the future  
24 dangerousness issue?

25 A. No, I do not.

1 Q. Can you tell me what opinions that you anticipate  
2 rendering on Special Issue Number 2 then?

3 A. Yes, sir. My opinion will have to do with the kinds  
4 of mitigating factors that might have impacted on Jedidiah  
5 Murphy's life to bring him to the point that he was at when  
6 this crime occurred. And that will include a number of  
7 things. I guess I could divide them by placement and  
8 chronologically. His first years, I guess, through about the  
9 age of 5 with his biological parents were marked by family  
10 violence, alcoholism on the part of his father, observing --  
11 apparently observing his father knock his mother's teeth down  
12 her throat, police being called, mother being taken to the  
13 hospital and so forth. They lived in a small home with at  
14 times the paternal grandparents. And there were, I think,  
15 six children, three from one marriage and three from another  
16 marriage in that household in addition to Jedidiah's mother  
17 and father. From about age 5 --

18 Q. If we can just stop there with from birth to age 5.

19 A. Yes.

20 Q. Can you tell me the source or sources for the  
21 information that you've just given to me?

22 A. Yes, sir. Hope Abbott, Jim Murphy's mother, and Mr.  
23 Murphy himself. Also, I would want to cite some information  
24 that was provided to me by Ms. Tolar, the first adoptive  
25 parent, who told me what Donnie and Jim Murphy told her --

1 then Kines rather than Murphy -- told her and her husband  
2 about their early years. She recalled that they regularly  
3 made comments about things that had happened to them in their  
4 home.

5 Q. Okay. So it would be Hope Abbott and Celeste Tolar?

6 A. That's correct.

7 Q. Any --

8 A. And Mr. Murphy.

9 Q. Right. Any -- well, okay, Mr. Murphy, is that the  
10 defendant?

11 A. Yes.

12 Q. That your referring to?

13 A. Yes.

14 Q. Okay. Did you review any -- any documents with  
15 regards to ages 0 to 5?

16 A. No, I didn't.

17 Q. Okay. I believe you were about to begin with age 5  
18 and onward?

19 A. Yes. It's not absolutely clear what chronological  
20 age he was or what the dates were, but apparently along about  
21 there Mr. Murphy was placed, along with his five half and  
22 full siblings at Buckner's Baptist Children's Home by his  
23 mother. And then shortly thereafter, as I understand it, his  
24 mother came and got the eldest three children, the children  
25 from the previous marriage and took them with her. And as I

1 understand it from her, left the area with another man.  
2 After that, as I understand it, the grandparents, paternal  
3 grandparents at some point came and got the children out of  
4 Buckner, had attempted to take care of them themselves, but  
5 they were both ailing and Mr. Murphy, Sr., or Mr. Kines, Sr.,  
6 Roy Don Kines, was ill and also his health was seriously  
7 compromised. He could not take care of the children. As I  
8 understand it, a family member, a cousin arranged the  
9 placement at the Tolars and -- that resulted in adoption.

10 And as I understand it, at Buckner, while the  
11 children were there, Jim Murphy has very little memory of  
12 those years at Buckner. Donnie was a source of information  
13 for me, and he told me a little bit about their placement at  
14 Buckner, as much as he could remember, which was also --

15 Q. I'm sorry. Was there anything about their placement  
16 or their stay at Buckner's that you think relates to Special  
17 Issue Number 2?

18 A. The very fact of their being there of course. And  
19 as I understand it, they probably held the opinion then that  
20 they were there because their mother didn't want them. That  
21 I understand principally from Donnie and from Ms. Tolar --  
22 Ms. Tolar. We have not been able to identify any records or  
23 obtain any records from that Buckner placement, but there  
24 surely should have been some psychological testing during  
25 those years. I don't have that.

1 Q. So the information concerning Buckner's comes  
2 primarily again in some limited extent from the defendant,  
3 Celeste Tolar, and Donnie Tolar?

4 A. That's correct. Donnie, I'm not sure what his last  
5 name is now.

6 Q. What would be the next chronological period that you  
7 focused on?

8 A. There was a brief hiatus during which Mr. Murphy was  
9 in another placement in Fruitvale, and I don't know anything  
10 about that so I won't be talking about it. Then after that  
11 he was in placement with the Murphys as I -- I'm sorry, with  
12 the Tolars.

13 Q. What is your understanding as far as the length of  
14 stay at Buckner's home?

15 A. Let me correct myself. The Fruitvale placement  
16 would have been after the Tolars. I haven't been able to  
17 establish that, but it seems to me that he must have been at  
18 Buckner less than a year. I just don't know.

19 Q. Okay. All right. And then going forward to the  
20 time that he spent in the Tolar home.

21 A. And again, it's impossible to establish dates, or I  
22 haven't been able to establish dates. But I'm gathering that  
23 he was at the Tolar's for about five years, roughly from the  
24 age of 7 to 12. And my understanding of the placement there  
25 is based on what he told me about it, what Donnie told me



1 about it, what Celeste Tolar told me about it, photographs  
2 that Celeste Tolar provided to me, and peripherally what Hope  
3 Abbott said that she understood regarding that placement, but  
4 I think she understood it through those same sources.

5 Q. Uh-huh. And again, specifically what occurred in  
6 the Tolar home that you think would be relevant to Special  
7 Issue Number 2?

8 A. One thing that I think was particularly cogent was  
9 that throughout that placement apparently both Donnie and Jim  
10 maintained that they were not with their mother because their  
11 mother didn't love them and didn't want to take care of them.  
12 That's remarkable, of course, because for a child that age to  
13 have to try to incorporate that fact in his sense of self,  
14 would have special ramifications and impact on his sense of  
15 his own lovability and worth.

16 And it's somewhat unusual, by the way, in my  
17 experience with children, and I used to work at Buckner  
18 children who are placed there who have a parent living,  
19 generally do make lots of excuses for their parent and  
20 believe the parent will come and get them at some point. So  
21 these children seemed remarkable in their acceptance of this  
22 fact that their mother didn't care enough about them to take  
23 care of them.

24 While at the Tolars, three deaths occurred in Mr.  
25 Murphy's family. His biological father died and both of his

1 grandparents died within apparently a very short period of  
2 time. While there, as I understand it from Donnie, the  
3 children, the five boys, Donnie, Jim, and the three Tolar  
4 children, would engage in considerable misbehavior antics  
5 while Mr. Tolar was away at work. He was a fireman and was  
6 working 24 on, I think was away from home a lot. Reportedly  
7 when he would come home, Mrs. Tolar would tell him what the  
8 children had done and then he would discipline the children.  
9 She herself told me that she disciplined as long as her  
10 strength held out, but that her husband took over when he got  
11 home.

12 As I understand from Donnie, a great deal of  
13 discipline was meted out on Jim for some reason. And Donnie  
14 felt the need to protect him and to stand up for him and  
15 frequently intervened on his behalf. The discipline that I  
16 was told about principally by Donnie had to do with whippings  
17 with bed slats, being locked in a room, being locked out of  
18 the house, being not fed. Mrs. Tolar herself told me that  
19 principally with Donnie they would use isolation or locking  
20 him in the room. She didn't specifically say that they did  
21 that with Jim, but nor did she deny it and I didn't ask her.  
22 I felt that my ability to get information with her and  
23 information that I needed was principally the pictures and  
24 her account of their time there would have been compromised  
25 by my being highly confrontive, so I didn't ask her.

1 Q. So you didn't ask her whether her husband had used  
2 improper discipline on the defendant?

3 A. No, I certainly wouldn't have used the word  
4 "improper" if I had asked such question.

5 Q. Did you discuss the types of discipline that her  
6 used on the defendant?

7 A. No, I didn't discuss the specific types of  
8 discipline with her. Other than those that she told me  
9 voluntarily.

10 Q. That primarily concerned the discipline of Donnie?

11 A. Yes.

12 Q. By putting him basically in a time out or an  
13 isolation setting?

14 A. That's right. In addition -- go on.

15 Q. No, go ahead. I'm sorry.

16 A. In addition to that information, I have information  
17 from Jim Murphy himself about that placement and about his  
18 recollections there, that more or less corroborate, although  
19 considerably understate, what his brother told me. He also  
20 said that Donnie would take up for him, that things would  
21 snowball and get out of hand because of that.

22 I tried to establish whether Child Protective  
23 Services was ever called or was ever involved and couldn't  
24 gather that they ever were. As I understand it, the  
25 placement broke. Mrs. Tolar told me because they just got to

1 the point that they couldn't -- I don't remember her exact  
2 words, put the children up any longer, and so they gave them  
3 to the State to raise. And that, I believe, is when the  
4 brief placement at Fruitvale took place, and I think it was  
5 while Jim was at that placement that he was at school in  
6 Fruitvale and Mrs. Murphy saw him and felt that he would be a  
7 good companion to her son.

8 Q. So with regards to the history on the Tolar home,  
9 the information would have come from the defendant, from  
10 Donnie, from Celeste Tolar, and to some extent Hope Abbott;  
11 is that correct?

12 A. That's correct.

13 Q. And as well as photographs that you obtained from  
14 Celeste Tolar?

15 A. That's correct.

16 Q. Did you obtain any sort of records or documents from  
17 Celeste Tolar?

18 A. No, I didn't.

19 Q. Did you review any sort of records regarding the  
20 defendant's stay at Tolar, medical records? I believe you  
21 just said there were no CPS records generated, correct?

22 A. I don't know. I haven't obtained any. I haven't  
23 reviewed any documents for that period.

24 Q. And then the next -- next stage would be his  
25 placement at the -- I believe it was the Van Zandt County

1 Children's Shelter in Fruitvale. Was there anything about  
2 his stay there that would be relevant on Special Issue Number  
3 2?

4 A. I don't have any information about that placement.  
5 Of course, the very fact of there being numerous placements  
6 bears on Special Issue Number 2.

7 Q. Have you reviewed any records concerning the  
8 placement in Fruitvale?

9 A. No.

10 Q. Have you specifically spoken with anyone about that  
11 placement?

12 A. No, I haven't.

13 Q. Was the defendant able to give you any information  
14 about that placement or stay at Fruitvale?

15 A. No, he gave me know information other than it  
16 occurred.

17 Q. And I take it that -- was Donnie able to provide you  
18 any information?

19 A. No, he wasn't.

20 Q. Hope Abbott?

21 A. No.

22 Q. Or Celeste Tolar, besides what she's already told us  
23 about actually some breakdown where they thought it was  
24 necessary to take the children over there?

25 A. Correct. She gave me no information about the

1 Fruitvale placement beyond that.

2 Q. What would be the next chronological period of time  
3 that you focused on?

4 A. I think essentially from about 12 -- age 12 to about  
5 age 16.

6 Q. Would that be the time spent at the Murphy home?

7 A. Yes, sir.

8 Q. What information do you think would be relevant on  
9 Special Issue Number 2?

10 A. I think that kind of skipping into the placement  
11 some distance when the Murphys began to have marital problems  
12 and decided to separate, Mr. Murphy felt that it was his  
13 fault that the marriage was breaking down or had broken down  
14 because Mr. Murphy had been spending more time with him than  
15 with his own son, Matthew I believe is his name, and there  
16 was apparently more camaraderie between Mr. Murphy and Jim  
17 rather than Mr. Murphy and Matthews so in fact when they did  
18 separate, Matthew went with his mother and Mr. Murphy went  
19 with his father, his adoptive father.

20 And he said from that point on, that Mrs. Murphy  
21 hated his guts and would have nothing to do with him. In  
22 fact, he indicated that he sent a picture of Alyssa his  
23 daughter to her and she sent it back. He reported then that  
24 a series of events started occurring, and I guess backing up  
25 a bit, started by way of his beginning to drink and

1 experiment with drugs at the age of 14. And to be well  
2 underway with serious drinking by the age of 15. He  
3 indicated that he shamed, embarrassed, and disappointed Mr.  
4 Murphy by his behavior. Mr. Murphy apparently bailed him out  
5 a few times, smoothed things over for him a few times when he  
6 got in trouble with the law, but ultimately decided not to  
7 continue doing that and left him in jail on one arrest, the  
8 one that resulted in his going to the boot camp in Childress  
9 I think it was. And he indicated that since that time his  
10 relationship with Mr. Murphy has been very strained. In  
11 fact, he described it as his own being angry with Mr. Murphy  
12 for leaving him in jail and not bailing him out.

13 So I think at that time it seems to me that his  
14 character was congealing by way of the forces that have  
15 impacted him up to that time, that he's being to identify  
16 himself as an alcoholic, as he put it, as the spitting image  
17 of his father, a person who wasn't a good person or didn't  
18 support himself well. He began to act out considerably and  
19 without regard for the effect it was having on other people.  
20 I think that probably rounds out that period.

21 Q. Okay. Did you -- did you speak with either Bob or  
22 Samantha Murphy regarding that time period?

23 A. No, I have not yet. That's --

24 Q. Who would have been the sources for your information  
25 about what occurred in the Murphy home?

1 A. Mr. Murphy, Jim Murphy.

2 Q. Okay.

3 A. And my review of records, the records around the  
4 arrest that led to the boot camp, for example, and his  
5 reports and later social histories regarding events that  
6 occurred around that time.

7 Q. Did they -- would those be the social histories  
8 included in medical records?

9 A. Yes, sir, they would.

10 Q. What would be the next chronological time period?

11 A. As he got out of the boot camp and had formed, I  
12 guess, or then formed his relationship with Chelsie Willis  
13 and leading up until just before the crime occurred, that  
14 period seems to be one characterized by intermittent periods  
15 of sobriety and employment, but predominately drinking to the  
16 point of severe impairment and reportedly some hallucinating  
17 at times, some blackouts, some withdrawal efforts that  
18 resulted in DT's. He referred to himself as a wet head,  
19 being in and out of treatment, in and out of difficulties  
20 with the law, suffering numerous physical injuries at work,  
21 which I assume was probably at least in part caused by his  
22 difficulty focusing and thinking clearly owing to his  
23 alcoholism and his general kind of self-destructive bent  
24 apparently.

25 There was also some evidence of some excessive risk



1 taking, kind of throwing himself against things, almost  
2 defy -- as if trying to hurt himself or see how far he could  
3 push the -- push it.

4 I think there were some periods of intermittent good  
5 functioning, according to Chelsie Willis, and periods when he  
6 was right there for her, very involved with his new born  
7 daughter, and then a later child that she had, quite  
8 functional, doing things that were perhaps even beyond the  
9 kin of -- or beyond the limits that Chelsie -- beyond  
10 Chelsie's expectations for males in the household, caring  
11 for, attending to the baby, nursing, feeding, bathing, taking  
12 care of the house. I think she suffered some illness, the  
13 baby, the later -- the second baby had some illnesses and so  
14 she said that when he was sober and straight, he was  
15 extraordinary in his help and his comportment in the house.

16 He indicated that he was quite accomplished as a  
17 welder. When he worked, he did a good job and could work,  
18 could get a job pretty easily, but the record indicates that  
19 his employment was probably pretty spotty, lots of job  
20 changes, lots of interruptions in his work by  
21 hospitalizations and so forth.

22 I think there were one and probably two fairly  
23 significant suicide attempts.

24 Q. What were those?

25 A. There was one in which he -- I think late '98 when

1 he took 40 -- took 40 tablets, ended up hospitalized for  
2 about nine or ten days. I don't have my notes open to that  
3 time. I can look for it.

4 Q. I've got page 5 of your report that states that he  
5 reported trying to kill himself in '97 or '98, taking 60  
6 sleeping pills. Is that what you're referring to?

7 A. Yes, but the record indicates it might have been  
8 reported as 40 at the time that it happened.

9 Q. So the number 60 would have come from the defendant?

10 A. Yes, and from records. It's 11 -- apparently the  
11 incident occurred on 11-18-98, and he was at Oak Haven on  
12 11-19-98 for ten days for overdosing on 40 sleeping pills.  
13 He was diagnosed alcohol dependent and discharged after, I  
14 think, ten days with a GAF of 50 to 55 global assessment  
15 functioning. It's very low.

16 The other suicide attempt --

17 Q. I'm sorry, what does that GAF indicate to you as a  
18 psychologist?

19 A. Well, it indicates to me that he was having  
20 tremendous difficulty functioning in the world. There was  
21 severe impairment in his ability to work, his ability to have  
22 relationships, that he was so dysfunctional that he likely  
23 could not have managed himself independently.

24 Q. Okay.

25 A. The other suicide attempt of which I'm aware was one

1 that he described that was apparently witnessed by Mr. Crow.  
2 I haven't spoken with Mr. Crow yet, but the report that Mr.  
3 Murphy gave me was that he was intent upon killing himself  
4 and that he met with Mr. Crow at some establishment in the  
5 parking lot and he had a loaded gun and was planning on  
6 killing himself. And Mr. Crow intervened -- I gathered from  
7 the way Mr. Murphy told me about it, that he was asking for  
8 Mr. Crow to intervene and he did so.

9 Q. Where did that -- do you remember where that took  
10 place?

11 A. I don't remember. I can look. He said at a church  
12 parking lot near his home. I don't know whether it refers to  
13 Mr. Crow's home or Mr. Murphy's home at the time. He said  
14 Mr. Crow brought his wife Lori along, that he had a 12 gauge  
15 shotgun and it had ammunition in it and he racked it and got  
16 a bullet in it, but it didn't go off. He said that Mr.  
17 Crow -- I think Mr. Crow followed him home. They dropped  
18 off his gun. Mr. Crow called the police, and they took him  
19 to jail in Kaufman. And when he got out the next day, he  
20 went Mr. Crow's home to pick up his truck which Mr. Crow had  
21 driven home for him. So those are the two suicide attempts  
22 of which I'm aware.

23 Q. Have you interviewed Chelsie Willis?

24 A. Yes, I did, by telephone.

25 Q. How many times have you interviewed the defendant?

1 A. Three times.

2 Q. Where did those interviews take place, in jail?

3 A. Yes, they did. The third time was practically not  
4 an interview. I saw him for some testing, and we talked  
5 briefly. The circumstances were that we were in this room  
6 just off of this room, and there was another inmate there  
7 being interviewed by her attorney. And it was not a private  
8 situation and somewhat noisy, so we didn't actually talk for  
9 any length of time.

10 Q. Have you administered any tests yourself to the  
11 defendant?

12 A. Yes, sir, I have.

13 Q. What tests have you administered?

14 A. The Shipley Institute of Living Scale which is a  
15 brief measure of intellectual function, the Minnesota  
16 Multiphasic Personality Inventory 2, the Millon Clinical  
17 Multiaxial Inventory III and the TOMM.

18 Q. And what again was the purpose of the Shipley  
19 Institute of Living Scale?

20 A. I wanted to get a general sense of his intellectual  
21 capacity and whether he had over or underachieved in terms of  
22 the application of intellect in his life.

23 Q. What was your findings?

24 A. I think he was of average. That's toward high  
25 average -- let me see, average intellectual ability so that

1 it appeared that he had achieved about the level one would  
2 expect in terms of the career as a welder, in terms of high  
3 school grades that were reported, and so forth.

4 Q. All right. What was the purpose of the MMPI 2?

5 A. I wanted to get a sense of his current functioning,  
6 his -- his mental state, his symptomatology, what level of  
7 symptoms he was reporting at the time I was seeing him.

8 Q. Okay. What were your findings?

9 A. He was extremely symptomatic. He was subscribing to  
10 a broad range of symptoms, suggesting that he was in extreme  
11 emotional distress, anxious, depressed, confused, physically  
12 symptomatic to some extent.

13 Q. In what way?

14 A. Oh, I don't know the specific items without  
15 looking. As I recall, he was having a number of symptoms  
16 related to his -- attempting to get his medication adjusted  
17 and was having difficulty sleeping. I think he was having  
18 some discomfort in his extremities. Let's see, he was having  
19 upset stomach, every few days having some pains over his  
20 heart or in his chest. His extremities were burning or  
21 tingling or feeling like they were going to sleep. A lot of  
22 stomach trouble, headaches, blank spells. Those may have  
23 been historic rather than at the time. Numbness. He had an  
24 injury to his thumb on his left hand, I think, that he  
25 reported when asked that he did experience some numbness. I

1 think that's about -- about all of the physical symptoms.

2 Q. Do you recall when you administered the MMPI 2?

3 A. I don't recall, but I can look. 2-28-01.

4 Q. How about the Shipley Institute of Living Scales,  
5 when was that administered?

6 A. 2-13-01.

7 Q. The next test that you mentioned, was that MCMI --

8 A. 3.

9 Q. -- 3? What was the purpose of that test?

10 A. Also an effort to gain a clearer understanding of  
11 how Mr. Murphy was describing himself on -- along dimensions  
12 of psychological symptomatology. The MCMI 3 focuses  
13 particularly on character pathology. And I was interested in  
14 seeing what picture would emerge from his MCMI 3 profile.

15 Q. When was that administered?

16 A. On 3-1-01.

17 Q. What were your findings there?

18 A. Again, he was extremely forthcoming, extraordinarily  
19 symptomatic, made no effort to present himself in a desirable  
20 way or to gloss over or minimize symptoms, as was the case  
21 with the MMPI. He answered questions suggesting that he's an  
22 extremely depressed person, that by personality style, he's  
23 somewhat dependent -- more than somewhat, very dependent,  
24 that he has antisocial characteristics, that he suffers from  
25 rather extreme anxiety, extreme alcohol dependence. He had

1 symptoms that are similar to those people who are diagnosed  
2 with posttraumatic stress disorder. As I say, it was just  
3 broadly extremely symptomatic. There were no indications of  
4 compulsive behavior, of paranoid thinking. As I said, no  
5 indications that he was trying to present in a positive light  
6 or to gloss over his own shortcomings.

7 Q. What was the final test, the TOMM?

8 A. Yes, sir.

9 Q. What is that test?

10 A. It's the test of memory and malingering. And I gave  
11 it on the last date that I saw him, which was 3-1-01.

12 Q. Okay. What's the purpose of that test?

13 A. The test is designed to provide an opportunity to  
14 measure malingering, patients attempting to look worse than  
15 they are, specifically in cognitive capacity.

16 Q. How would a patient go about doing that?

17 A. Typically the -- the test has two trials and then a  
18 retention period of testing, so that you present the stimulus  
19 for each of the items in Trial 1. And then test the person  
20 on their memory of them. And then in Trial 2. And finally  
21 in the retention period, the person who's attempting to  
22 malingering will generally assume that it would be a good idea  
23 to have retained less information, to remember less. And in  
24 fact, even people with neurological impairment can do  
25 extremely well on the instrument and not show a loss of

1 memory over this. It's a 30-minute break between the last  
2 item on the second trial and the retention period. So people  
3 who are attempting to look bad will generally miss a great  
4 many items, even though the test is extremely simple and  
5 straightforward, and will particularly miss items in their  
6 retention period.

7 Q. What does this statement mean? The MCMI 3 results  
8 were suggestive of the possibility of some symptom over  
9 reporting with self-debasement predominating?

10 A. Yes, sir, and that's why I administered the TOMM.  
11 Both on the MMPI and the MPMI, Mr. Murphy was so symptomatic  
12 that the software programs we use for scoring on the computer  
13 suggested the need to rule out malingering, that is, he  
14 seemed to be subscribing to such a broad range of symptoms  
15 that it looked as though as he was more emotionally  
16 distressed than one generally sees even in a clinical  
17 population.

18 Q. How many times have you administered the Shipley  
19 Institute of Living Scale to individuals facing trial for the  
20 death penalty?

21 A. I would routinely administer it -- and I guess then  
22 that that would mean somewhere in the neighborhood of ten  
23 times.

24 Q. How about -- again, defendants facing death penalty  
25 trials, how many times have you administered MMPI 2?



1           A.    I think possibly about the same number. Perhaps  
2 fewer because it requires a certain reading level, so I'm not  
3 sure that I've administered it to every single person I've  
4 tested. I think I've administered it orally at least once.

5           Q.    The same question for the MCMI 3?

6           A.    Relatively rarely, probably two or three times.

7           Q.    And again, what was the reason that you decided to  
8 administer that test in this case?

9           A.    The MCMI 3? I was interested in seeing how Mr.  
10 Murphy would represent himself, whether he was fully  
11 appreciative of the character pathology that was evident from  
12 his history. He was quite forthcoming with me on interview  
13 and seemed to be willing to own up to his shortcomings and  
14 his interpersonal difficulties. And I -- I guess I wanted to  
15 see that in a measured quantitative format and so I  
16 administered it and he did in fact do just that.

17          Q.    How is that test administered?

18          A.    The MCMI 3?

19          Q.    Yes.

20          A.    It's 175-item instrument that is in true-false  
21 format and the person reads the item and then says that's  
22 true about me or that's false about me by coloring in the  
23 bubble.

24          Q.    Finally, the TOMM test, how many times have you  
25 administered that test to people facing the death penalty

1 trial?

2 A. I don't think I ever have before Mr. Murphy.

3 Q. You also -- I guess you had some time just to simply  
4 interview him, correct?

5 A. Yes. Yes, sir, I did.

6 Q. Just to gain some sort of information from a  
7 clinical evaluation?

8 A. Not for a clinical evaluation, but for an  
9 evaluation, yes.

10 Q. Did you believe him to be forthcoming?

11 A. Generally, yes, I think he -- he certainly didn't  
12 tell me everything there was to tell me about his history.  
13 I'm not sure whether he picked and chose what he told me.  
14 Seemed to go right to the heart of most of the things that  
15 I've discovered would be considered the worst things about  
16 him. I limited the time to some extent. I think I spent  
17 three or so hours with him, so -- and there were numerous  
18 interruptions, so I think there may have been times when he  
19 didn't give me the whole history because of those  
20 interruptions. I don't know that I provided him ample  
21 opportunity when we would then meet again to go back and mop  
22 up if there was anything he left out.

23 Q. Did he tell you that he held a gun up to the head of  
24 Mandy Kirl in 1993?

25 A. No, sir, he didn't.

1 Q. Did he tell you that he kidnapped Cheryl Wilhelm in  
2 Arlington, Texas, on August 26th, 1997?

3 A. No, he didn't.

4 Q. Did he tell you that he struck his common law wife,  
5 girlfriend, or whatever she is, Chelsie Willis, back in  
6 August of 1997?

7 A. I don't know whether he gave me that specific date,  
8 but he certainly told me that he struck her.

9 Q. How did he strike her?

10 A. He told me that they -- I'll have to find it in my  
11 notes.

12 (Witness researches notes.)

13 A. Okay. I'm ready.

14 Q. (By Mr. Davis) Yes, ma'am.

15 A. He said that he had struck his wife physically five  
16 times. He said he hit her in the face with an open hand one  
17 time. And I asked him to tell me about that, and he said  
18 that she had thrown a tea glass at him and busted him on the  
19 head -- the glass busted him on the head. I asked and he  
20 said it broke. It was full of tea. And he added I asked for  
21 it. He said she is not timid and she is not a martyr and  
22 that she would admit her part in every one of the fights they  
23 had. He said that he went to anger management classes and  
24 that he was charged once with family violence because of it,  
25 but that the police were called out two or three times,

1 sometimes for verbal exchanges and hollering.

2 Q. Did he make any mention where he got the knife that  
3 he was holding on her when the police officer got there?

4 A. No, he didn't. I saw that in the record, and I  
5 didn't -- I didn't interview him in great detail about  
6 those. In fact, as you can see, I didn't follow up on the  
7 other four times. He told me about one, and we went on from  
8 there to talk further about the anger management and so  
9 forth. So I didn't go back and ask him about the other four  
10 times he hit her. I asked her.

11 Q. I take it when you mentioned Chelsie busting a tea  
12 glass on his head, that he didn't volunteer any information  
13 about the knife?

14 A. No, he didn't.

15 Q. Doctor, can you just tell me, do you have a list  
16 before you or some means of telling me what documents that  
17 you've actually reviewed in this case?

18 A. I think in the beginning of my report I listed --  
19 no, I didn't list them in detail, did I? Medical records,  
20 some school records, police records regarding the offense, so  
21 I don't -- I don't have them already listed, but I have them  
22 tabbed and can run through them if you would like. Shall I  
23 do that?

24 Q. Yes, if you don't mind.

25 A. Okay. Let's start with the infirmary records from

1 this current incarceration; Parkland -- Parkland's records;  
2 and the Dallas County inmate mental health records. Let's  
3 see, the probation records, the Oak Haven records, Glen Oaks  
4 records, Medical Center Arlington, Sabine Valley Center  
5 Records.

6 Q. Is that the Andrews Center?

7 A. I think so. Yes. And Van Zandt County community --  
8 oh, that's his probation. The Garland police affidavits, and  
9 the letter from Cindy Hale to Mr. Murphy and his written in  
10 responses. I think that's everything.

11 Q. Doctor, do you anticipate doing any further work  
12 prior to testifying in this matter?

13 A. Yes, sir, I do.

14 Q. What work do you anticipate doing?

15 A. I intend to review some letters that were given to  
16 me today that were reportedly written by Mr. Murphy to his  
17 mother and his sister Tonya.

18 And by the way, when I was listing documents, I  
19 didn't detail photographs. The defense attorney gave me two  
20 photographs of Mr. Murphy that I haven't otherwise  
21 addressed. You have copies of them in the materials that I  
22 provided.

23 I intend to talk with Mr. Crow, with Mr. and Mrs.  
24 Murphy if I can get their consent to do so, with his sister  
25 Tonya, with Matthew Murphy -- excuse me. And there is a

1 person Delosier -- Delosier, I'm not sure exactly who that  
2 is. Ms. Little told me that she wanted me to speak with  
3 him. I think it's a him. I haven't got that information.  
4 There was also an uncle she mentioned that she might like for  
5 me to talk with who was aware of some of Mr. Murphy's  
6 father's drinking history. So those collateral contacts  
7 incorporating the information that they provided in the draft  
8 report that I've provided to you would be the additional  
9 information that I intend to try to gather.

10 Q. I know that you testified in the matter of Robert  
11 Wayne Harris. How many other capital murder trials have you  
12 testified in?

13 A. I think that's the only other one I've testified in.

14 Q. How many other cases have you been a consultant in?

15 A. Let's see, I think two others come to mind -- no,  
16 wait, I'm sorry. Perhaps three others. I'm not sure --  
17 sentencing, but I'm trying to remember whether the death  
18 penalty was an issue. I remember now. It wasn't. It would  
19 be today, but at that time it was not a death penalty case.

20 Q. All right. Now, Doctor, included in your records  
21 I've got what appears to be a printout of a power point  
22 presentation; is that correct?

23 A. That's correct.

24 Q. Is that the presentation that you anticipate giving  
25 to this jury?

1           A.   Not in its entirety. That's the entire presentation  
2 as it is today. I intend to add to it. I understand that  
3 Tonya has some additional pictures and documents that I may  
4 be able to obtain to include.

5           Q.   All right. Do you have -- do you have photographs  
6 with you right now that -- that you anticipate you'll be  
7 showing to this jury?

8           A.   Yes, sir, I do.

9           Q.   Do you have them separated out so that I can see  
10 what photographs you actually intend to use, because I know  
11 you've been provided with a lot of photographs, haven't you?

12          A.   Yes, I have been. I do have the ones from Ms. Tolar  
13 that I intend to use separated out. And I think I can pick  
14 out the ones that I took myself -- out of the group of ones I  
15 took myself, I think I can pick out the ones that I intend to  
16 use. And Ms. Little has one that I intend to use in that  
17 envelope that I gave back to you. One of those two is in my  
18 power point presentation. Okay.

19          Q.   Could I see that additional photograph Ms. Little  
20 has in her possession? You've separated these photographs in  
21 front of you into two piles. The one that's on your left,  
22 would that be the pile that you anticipate using?

23          A.   No, sir, this is the one that Ms. -- these pictures  
24 are from among the ones that Ms. Tolar gave me. And these  
25 pictures are from the ones that I took myself.

1 Q. Okay. So both piles --

2 A. Are already in the power point presentation.

3 MS. LITTLE: And here are the other two I  
4 have.

5 A. And only one of those two -- the one with his  
6 daughter in it, this one.

7 Q. (By Mr. Davis) Okay. And you've just now handed me  
8 an additional photograph?

9 A. Yes, sir.

10 Q. Appears to be the defendant with his daughter and  
11 with Chelsie Willis's youngest child?

12 A. That's correct.

13 Q. Okay. First -- I don't know how the Court would  
14 like to do this. If we could have a -- because I will be  
15 referring to these -- if I could --

16 MR. DAVIS: What's my next number?

17 THE REPORTER: 143 would be the next number.

18 Q. (By Mr. Davis) Okay. I'm going to -- as a group,  
19 if we could, I'd like to have the three photographs that  
20 you've just -- looks to be a picture of an old house, front  
21 door of, what, Buckner's home, as well as a grave site for  
22 Roy Donald Kines; is that correct?

23 A. That's correct.

24 MR. DAVIS: If we could have these  
25 collectively, for the purpose of this hearing, identified as



1 State's Exhibit 143.

2 THE COURT: Granted.

3 Q. (By Mr. Davis) And the remaining photographs which  
4 appear to be the photographs in general of the defendant as a  
5 child; is that right?

6 A. That's correct. Before you enter those as an  
7 exhibit, I promised Ms. Tolar that I would do my very best to  
8 get those back to her. And I made copies so that -- I hoped  
9 it would be possible to give those back to her in their  
10 entirety.

11 MR. DAVIS: I believe we can make arrangements  
12 have these copied.

13 MS. LITTLE: I think you already did copies of  
14 all but the two I just gave you in the packet.

15 THE WITNESS: I made the copies. They're in  
16 black and white.

17 MR. DAVIS: Again, for purposes of this  
18 hearing, the remaining photographs I'll introduce as State's  
19 Exhibit 144.

20 (State's Exhibit No. 144 offered)

21 THE COURT: Any objections, Ms. Little?

22 MS. LITTLE: No, sir.

23 THE COURT: Admitted, 144.

24 (State's Exhibit No. 144 admitted)

25 Q. (By Mr. Davis) Do you anticipate reviewing any

1 additional records?

2 A. Yes. If the records from Buckner can be found, I  
3 certainly intend to review those. I'd still like to review  
4 school records. Ms. Tolar admitted that she should have  
5 some, but when I arrived to pick up the records, she didn't  
6 have those included and I didn't realize until later that I  
7 didn't get them from her, so I don't know whether I'll get  
8 some from her.

9 I haven't spoken with the Murphys about what records  
10 they might have, but anything that they would have that would  
11 be relevant, I would be interested in reviewing.

12 Q. (By Mr. Davis) Do you have any plans to do any  
13 further research?

14 A. Not that I'm aware of, no.

15 Q. Any plans to do any additional testing?

16 A. No, sir.

17 MR. DAVIS: Judge, I'll pass the witness for  
18 the purpose of the 705 hearing.

19 THE COURT: Ms. Little.

20 MS. LITTLE: I don't have anything either,  
21 Your Honor.

22 THE COURT: Hearing concluded.

23 MR. DAVIS: Judge, if again -- this goes to  
24 the Motion in Limine that we previously filed. And I don't  
25 have that motion in front of me, but in general I believe the

1 Court will recall that this motion goes to the probative  
2 prejudicial value of mitigation evidence that I anticipated  
3 would be offered. And, in fact, that evidence has been  
4 provided to me. Essentially we have a number of photographs  
5 of the defendant as a child, in State's Exhibit 144, and  
6 again, pursuant to prior rulings, I would again urge my  
7 objection to these photographs. These photographs are not  
8 relevant. They're not probative of any issue. I believe the  
9 courts in the prior -- prior decisions have decided that  
10 photographs such as this simply are vehicles to evoke  
11 sympathy or emotional responses from a jury, and the cases  
12 are very clear precisely on the issue of childhood  
13 photographs not being relevant in mitigation. So --

14 THE COURT: May I see the photographs?

15 MR. DAVIS: Yes, sir. State's Exhibit 144,  
16 again, contains the childhood photographs of the defendant.  
17 And State's Exhibits 143, I don't have a problem with the  
18 older home or the front door of Buckner's, but I do have a  
19 problem with the third photograph in State's Exhibit 143  
20 which would be a photograph of the grave site of Roy Donald  
21 Kines which, again, I would suggest has absolutely no  
22 probative value whatsoever, other than to evoke some sort of  
23 sympathy for the defendant by showing his father's grave  
24 site. So would I object to that third photograph in State's  
25 Exhibit 143, Your Honor.

1 THE COURT: Ms. Little, do you care to be  
2 heard on this issue?

3 MS. LITTLE: I understand what the Rhodes case  
4 says, Your Honor, but we have Penry II now, and this case is  
5 about mitigation, as well as future danger, and I would  
6 submit that all of those things, that there's not any unfair  
7 balance for the jury to see any of these photographs. They  
8 can separate the wheat from the chaff. There's going to be  
9 victim impact testimony as well, I'm sure. And I don't see  
10 that there's going to be harm to the State.

11 THE COURT: The Court will review the  
12 pertinent controlling issues, and I'll make my decision on  
13 them before we resume on the 27th. On the record.

14 MR. DAVIS: Okay.

15 MS. LITTLE: Is that it?

16 THE COURT: Hearing is concluded.

17 (Recess of proceedings.)  
18  
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Reporter's Certificate

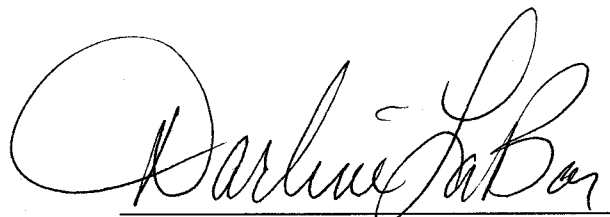
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 26th day of June, A.D., 2001.



DARLINE W. LABAR  
Official Court Reporter  
194th Judicial District Court  
Dallas County, Texas  
(214) 653-5803

Certification No. 1064 Expires December 31, 2002



## REPORTER'S RECORD

VOLUME 57 of 65 VOLUMES

74145

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : DALLAS COUNTY, TEXAS  
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

\*\*\*\*\*

PUNISHMENT PHASE BY JURY

FILED IN  
COURT OF CRIMINAL APPEALS

\*\*\*\*\*

DEC 5 2001

## A P P E A R A N C E S:

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\*\*\*\*\*

On the 27th day of June, 2001, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable F. Harold Entz, Jr.,  
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer  
assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: Both sides ready for the jury?

3 MS. BALIDO: Judge, we have one thing to take  
4 up, or actually two things to take up. The first thing is  
5 we'd like to make an oral Motion in Limine at this time that  
6 the District Attorney -- that this Court order the District  
7 Attorney, any of his witnesses to not mention whether or not  
8 there was a polygraph taken over at the jail until such time  
9 that this Court can make a ruling as to whether or not that  
10 is relevant.

11 THE COURT: Any objection, Mr. Davis?

12 MR. DAVIS: No, sir, not to the Motion in  
13 Limine. No, sir.

14 THE COURT: Request granted.

15 MS. BALIDO: Additionally, Judge, yesterday we  
16 filed a motion for mistrial based upon an unconstitutional  
17 application of prosecutorial discretion in death penalty  
18 cases in Dallas County. We filed that with this court, and  
19 we'd additionally -- we'd stand on our motion and  
20 additionally cite the Court of Criminal Appeals concerns in  
21 Payne, Mosley, and Goff -- well, actually the U.S. Supreme  
22 Court's in Payne that in death penalty cases the value of the  
23 victim in society being weighed in those cases by the jury  
24 and in this case we feel by the State as being  
25 unconstitutional.

1 THE COURT: Motion for mistrial is denied.  
2 Sheriff, may we have the jury, please.

3 MS. BALIDO: Judge, also, we -- in our motion  
4 for mistrial, we also specifically asked for a hearing with  
5 the State of Texas to prove that it is constitutionally  
6 applying the death -- the death penalty statute in Texas.

7 THE COURT: Request denied.

8 (Jury returned to courtroom.)

9 THE BAILIFF: All rise.

10 THE COURT: Let the record reflect the jury is  
11 returning to the courtroom at this time.

12 Jury may be seated.

13 Mr. Murphy, counsel, visitors in the gallery, you  
14 may be seated.

15 Ladies and gentlemen, welcome back.

16 Defense may continue. Call your next witness.

17 MS. BALIDO: The defense calls Dallas Sheriff  
18 Officer Roy Mathew to the stand.

19 (Witness sworn.)

20 THE COURT: You do. Thank you. Have a seat  
21 to my left, please.

22 You may continue.

23  
24 ROY MATHEW

25 was called as a witness by the Defendant and, after having

1 been first duly sworn, testified as follows:

2 Direct Examination

3 By Ms. Balido:

4 Q. Please state your name spell your last name for the  
5 record?

6 A. My name is Roy Mathew, M-a-t-h-e-w.

7 Q. And you're employed with the Dallas Sheriff's  
8 Department; is that correct?

9 A. Right.

10 Q. And what do you do for the Dallas Sheriff's  
11 Department?

12 A. D.S.O.

13 Q. Yes. Were you called to the jail to take digital  
14 photographs on May the 6th, the year 2001?

15 MS. BALIDO: Approach the witness?

16 THE COURT: You may.

17 Q. (By Ms. Balido) I'm showing you what has been  
18 marked for identification as Defendant's 46, 47, 48, 49, 50,  
19 51, 52, 53, 54, 55, 56, and 57, 58.

20 Are these the photographs that you took of Jedidiah  
21 Isaac Murphy in his cell on that night?

22 A. Yeah, it is.

23 Q. And do these pictures fairly and accurately depict  
24 what you saw in that cell and how you saw Mr. Murphy on that  
25 night?

1 A. Right.

2 MS. BALIDO: Judge, at this time we've  
3 tendered these to opposing counsel previously and we'd --

4 MR. DAVIS: No objection.

5 MS. BALIDO: -- we'd over them into evidence.  
6 (Defendant's Exhibit No. 46 through 58 offered)

7 THE COURT: Admit them all.

8 (Defendant's Exhibit No. 46 through 58 admitted)

9 MS. BALIDO: Can I ask the witness to step  
10 down?

11 THE COURT: You may.

12 Q. (By Ms. Balido) Now, Mr. Mathew, besides taking  
13 these pictures, did you do any investigation at all in this  
14 case?

15 A. Nothing. Nothing.

16 Q. Okay. Mr. Mathew, Defendant's Exhibit 46, is that  
17 an area in the jail depicted next to the --

18 A. Commode.

19 Q. -- the commode?

20 A. Right.

21 Q. And 47, are these Mr. Murphy's legs?

22 A. Right.

23 Q. Okay. And that was as he was laying on his  
24 mattress?

25 A. He was on the floor, and they took him off.

1 Q. Okay. On the floor.

2 (Photograph published to jury.)

3 Q. (By Ms. Balido) After they took out the mattress?

4 A. Right.

5 Q. And this is the top half of Mr. Murphy's body in  
6 Defendant's Exhibit Number 48; is that correct?

7 A. Yes.

8 (Photograph published to jury.)

9 Q. (By Ms. Balido) And Defendant's Exhibit 49, is this  
10 Mr. Murphy with some sort of mask on his -- on his face?

11 A. Right.

12 Q. Defendant's 50, this is Mr. Murphy's body with  
13 somebody actually putting pressure on the sides of his neck;  
14 is that correct?

15 A. Right.

16 Q. And Defendant's Exhibit 51, this is a picture of the  
17 top half of his legs and the lower part of his torso; is that  
18 correct?

19 A. Yeah.

20 Q. And Defendant's 52, this is a full length shot that  
21 looks like a jail nurse and then also a Sheriff's officer?

22 A. That's right.

23 Q. And 53 is a picture of Mr. Murphy with some sort of  
24 device going up to his mouth; is that correct?

25 A. Right.

1 Q. Defendant's Exhibit Number 4 (sic), that is the area  
2 around the commode again; is that correct?

3 A. Right.

4 Q. And what's the substance on the floor?

5 A. It's boxers.

6 Q. Okay. And the red substance?

7 A. Just --

8 Q. Blood?

9 A. Looks like tissue paper that --

10 Q. That's what the thick portion is on the floor?

11 A. Right.

12 Q. 55 and 56 are different views of the boxers and the  
13 blood on the -- around the commode area; is that correct?

14 A. Right.

15 (Photographs published to jury.)

16 Q. (By Ms. Balido) And the last two pictures are  
17 pictures of that as well; is that right?

18 A. Right.

19 Q. With boxers and the area around the commode?

20 A. Right.

21 Q. Did you take all these pictures?

22 A. Yes.

23 Q. With a digital camera?

24 A. Right.

25 MS. BALIDO: You can have a seat.



1 (Witness retakes the stand.)

2 MS. BALIDO: I'll pass the witness.

3 Cross-Examination

4 By Mr. Davis:

5 Q. Officer Mathew, my name is Greg Davis. You and I  
6 have never met before, have we?

7 A. We never.

8 Q. Officer Mathew, it would appear, wouldn't it, from  
9 those photographs that that blood has been smeared on the  
10 floor, hasn't it?

11 A. Right.

12 Q. Did you hear the defendant make any statements up  
13 there when you came to make those photographs?

14 A. No.

15 Q. So you don't know whether he may have said I guess  
16 this will delay jury selection? You don't know whether he  
17 said that or not, do you?

18 A. No, huh-uh.

19 Q. Did you see the defendant earlier that day in the  
20 jail?

21 A. No, I don't.

22 Q. So I take it you don't know what he was doing  
23 earlier in the day, do you?

24 A. No.

25 Q. You don't know whether he may have been watching an

1 NBA play-off game that day?

2 A. No.

3 Q. You don't know whether he talking with other inmates  
4 that day, do you?

5 A. No.

6 Q. You don't know how he had been acting prior to this  
7 incident, do you?

8 A. No.

9 Q. You don't know whether he may have been laughing  
10 earlier in the day?

11 A. No.

12 Q. Did you interview any other inmates, or did you just  
13 simply take the photographs?

14 A. I just took the photographs.

15 Q. Officer Mathew, had you ever seen the defendant  
16 before that day?

17 A. No.

18 Q. Were you -- were you called to investigate an  
19 incident that occurred on the 7th floor of the George Allen  
20 Jail on April 6th of the year 2001?

21 A. No.

22 Q. Were you asked to take any photographs over there at  
23 that location?

24 A. No.

25 Q. So you're not aware of what may have occurred on

1 April 6th the year 2001 at the George Allen Jail?

2 A. No.

3 MR. DAVIS: Thank you, Officer Mathew.

4 I'll pass the witness, Your Honor.

5 THE COURT: Ms. Balido.

6 MS. BALIDO: No questions, Judge.

7 THE COURT: Thank you, Sheriff. You are  
8 excused.

9 Defense may call its next witness.

10 MS. LITTLE: We call Larry Reed.

11 (Witness brought forward and sworn.)

12 THE COURT: Thank you, Mr. Reed. Have a seat  
13 to my left, please.

14 LARRY REED

15 was called as a witness by the Defendant and, after having  
16 been first duly sworn, testified as follows:

17 Direct Examination

18 By Ms. Little:

19 Q. State your name, sir.

20 A. Larry Reed.

21 Q. How are you employed?

22 A. I'm criminal investigator for the Public Defenders  
23 Office.

24 Q. Are you the head investigator for the P.D.'s office?

25 A. Chief Investigator.

1 Q. How long have you done that?

2 A. 18 years.

3 Q. And were you a Dallas Police officer previous to  
4 that?

5 A. Yes, I was.

6 Q. How long were you a Dallas Police officer?

7 A. Thirteen years.

8 Q. Let me ask you if you went to Arlington, Texas, to  
9 work on this case that the State is alleging Jim Murphy  
10 committed in regard to the hospital in Arlington and the  
11 route of that car that was taken in that kidnapping?

12 A. Yes, I did.

13 Q. When did you go there, Mr. Reed?

14 A. That was March the 16th.

15 Q. And did you -- did you go to Arlington Memorial  
16 Hospital?

17 A. Yes, I did.

18 Q. Were you able to find the parking lot that it's  
19 alleged this kidnapping occurred?

20 A. Yes, I did.

21 Q. What did you do then?

22 A. I photographed the parking lot, and then I drove the  
23 route that was indicated in the report that was taken.

24 Q. And what route was that?

25 A. That was after leaving the park lot, I went west on

1 Randol Mill Road and ended up at the intersection of Randol  
2 Mill and Green Oaks.

3 Q. And how far is it from the hospital to Randol Mill  
4 and Green Oaks?

5 A. That's four miles.

6 Q. How long did it take you to drive that distance?

7 A. 10 minutes.

8 Q. How fast were you going?

9 A. I was doing the speed limit which was 50 miles an  
10 hour.

11 MS. LITTLE: That's all I have.

12 Cross-Examination

13 By Mr. Davis:

14 Q. Mr. Reed, so it took you 10 minutes to go from the  
15 parking lot to the intersection of Green Oaks and Randol  
16 Mill; is that right?

17 A. Yes, sir.

18 Q. Okay. How long did you spend on the parking lot  
19 before you started driving in that direction?

20 A. 10 or 15 minutes.

21 Q. Okay. So in total then the 10 minutes that you  
22 drove plus 10 to 15 minutes that you were on the parking lot,  
23 correct?

24 A. Correct.

25 Q. Did you ever talk with Sherryl Wilhelm?

1 A. No, I did not.

2 Q. Interview anybody with the Arlington Police  
3 Department about this incident?

4 A. No, sir, I did not.

5 MR. DAVIS: Thank you, sir.

6 That's all the questions I have, Your Honor.

7 MS. LITTLE: Nothing further.

8 THE COURT: Thank you, Mr. Reed. You may step  
9 down. Excused if you wish.

10 Defense may continue.

11 MS. LITTLE: Call Officer Folmar.

12 THE COURT: Good morning, sir. Ask that you  
13 raise your right hand, please.

14 (Witness sworn.)

15 THE COURT: Have a seat to my left, please.

16 KEVIN FOLMAR

17 was called as a witness by the Defendant and, after having  
18 been first duly sworn, testified as follows:

19 Direct Examination

20 By Ms. Little:

21 Q. State your name, please, sir?

22 A. Kevin Folmar.

23 Q. And how are you employed?

24 A. I'm a police officer in the City of Wichita Falls.

25 Q. How long have you been a police officer?

1 A. Almost five years.

2 Q. Do you recall sometime back in August of 1997, the  
3 26th of August?

4 A. Yes, ma'am.

5 Q. And you recall that because you've been sought after  
6 by both sides about an episode that happened that day in your  
7 city; is that correct?

8 A. Yes, ma'am.

9 Q. Did you -- were you working patrol then?

10 A. Yes, ma'am, I was.

11 Q. And what did you do involving this case that we're  
12 here about?

13 A. I was dispatched to the Braum's located at 20 -- I  
14 think it's 24 -- 2304 Kemp in reference to a robbery of an  
15 individual.

16 Q. And did you go to the Braum's Ice Cream?

17 A. Yes, ma'am, I did.

18 Q. What did you find when you got there?

19 A. There was an elderly woman who stated to me that she  
20 had been robbed by a light-skinned Hispanic or a white male.

21 Q. And you took a report from her, such as you were  
22 able to get; is that right?

23 A. Yes, ma'am.

24 Q. What else did you do at that scene?

25 A. I spoke with her, and there was also a witness there

1 by the name of Felix Ozuna who observed a subject running  
2 with her purse and he did give chase, but did not catch him  
3 at that time.

4 Q. Okay. Did you ever have any other involvement in  
5 this case?

6 A. Not after taking that initial report, no, ma'am.

7 Q. Who was the case assigned to?

8 A. I believe it was Kyle Cook.

9 MS. LITTLE: That's all I have.

10 Cross-Examination

11 By Mr. Davis:

12 Q. Officer Folmar, you said this was an elderly woman  
13 that was robbed in Wichita Falls?

14 A. Yes, sir, I believe she was around 69 or 70 at the  
15 time.

16 Q. And this occurred on August 26th of 1997, correct?

17 A. Yes, sir.

18 Q. What was the time that the robbery occurred?

19 A. I believe it was 8:24 in the evening.

20 Q. And what was the victim's name, if you recall? Was  
21 this a Margie Ellis?

22 A. Yes, sir, I believe that's correct.

23 Q. And isn't it true that Ms. Ellis told you that this  
24 suspect walked by her vehicle or that she noticed him as she  
25 was approaching her vehicle, correct?



1 A. Yes, sir.

2 Q. And that he continued to approach her as she  
3 continued on to her vehicle; is that right?

4 A. Yes, sir.

5 Q. And then the suspect took her purse?

6 A. She related to me that she put the strap around her  
7 shoulder, she grabbed her purse with both hands, and then  
8 that's when they got into the tussle and he -- the suspect  
9 jerked it and she fell to the ground at that time.

10 Q. So there was actually a physical struggle between  
11 the suspect and this elderly woman, correct?

12 A. Yes, sir.

13 Q. And Ms. Ellis then as a result fell to the ground?

14 A. Yes, sir.

15 Q. Then the suspect did leave the scene, right?

16 A. Yes, sir.

17 Q. Ms. Ellis didn't see where he went to?

18 A. No. She didn't relate to me that information.

19 Q. Okay. Didn't tell you whether or not she saw him go  
20 to a particular vehicle or not?

21 A. Correct. As a matter of fact, she didn't really --  
22 couldn't give me that good of a description of him because  
23 she said that she suffered from bad eyesight.

24 Q. She was able to give you a partial description  
25 though, wasn't she?

1 A. Yes, sir.

2 Q. I want to talk to you about that. She was able to  
3 tell you, wasn't she, that this individual appeared to be  
4 about five feet ten in height?

5 A. I don't believe that -- I believe that description  
6 came from Mr. Ozuna.

7 Q. Okay.

8 A. I don't think that she could really give me any  
9 specifics. She was kind of upset at the time and excited.

10 Q. Did she tell you that -- whether or not she thought  
11 he had dark hair or not?

12 A. I don't remember. I think -- like I said, I believe  
13 the description came from Mr. Ozuna.

14 Q. Okay. So she's robbed, she's knocked to the ground,  
15 and then this suspect leaves, correct?

16 A. Yes, sir.

17 Q. She doesn't know whether he may have gone to a white  
18 Grand Am?

19 A. She didn't relay that information to me.

20 Q. Okay. Now, you are aware that Ms. Ellis's personal  
21 property was found in a white Grand Am later?

22 A. I didn't realize that until I was contacted about  
23 this case. I had -- didn't know anything else about it until  
24 I was contacted by Dallas.

25 Q. Okay. Well, you are aware now, aren't you?

1 A. Oh, yes, sir.

2 Q. And you're aware that that vehicle belonged to a  
3 Sherryl Wilhelm?

4 A. I wasn't aware of that, sir.

5 Q. Did anyone else interview Ms. Ellis about a possible  
6 description?

7 A. Like I said, after I took the initial report, I  
8 filed it with our detectives, and then what they do is -- is  
9 not anything that I have any knowledge of.

10 Q. Okay. Are the detectives here today?

11 A. I believe Kyle -- Kyle Cook is here today, yes, sir.

12 Q. Okay. Is it possible that he may have spoken with  
13 Ms. Ellis later?

14 A. I believe he did. I'm not for certain.

15 Q. Okay.

16 MR. DAVIS: That's all I have, Your Honor.

17 MS. LITTLE: May I approach the witness.

18 THE COURT: You may.

19 Redirect Examination

20 By Ms. Little:

21 Q. Officer Folmar, I'm showing you what's been marked  
22 for identification purposes as Defendant's Exhibit Number 42.  
23 Would you look at this for me? We looked at this this  
24 morning, did we not?

25 A. Yes, we did.

1 Q. And can you recognize that this is a portion of  
2 Wichita Falls, Texas?

3 A. Yes, ma'am.

4 Q. Does it fairly and accurately depict this area where  
5 the Braum's is and it's probably going to show that the car  
6 was subsequently found?

7 A. Yes, ma'am.

8 Q. Do you think it would aid the jury in understanding  
9 your testimony in this case?

10 A. Probably so.

11 MS. LITTLE: Did you see this?

12 (Defendant's Exhibit No. 42 offered)

13 MR. DAVIS: No objection.

14 THE COURT: Admitted.

15 (Defendant's Exhibit No. 42 admitted)

16 THE REPORTER: Which exhibit number is it?

17 MS. LITTLE: It is Exhibit Number 42.

18 Q. (By Ms. Little) I don't know if this will be easy  
19 for you, Officer Folmar, but I'll try it. Try not to write  
20 on myself while I'm at it. Can you see the map all right by  
21 yourself?

22 A. Yes, ma'am.

23 Q. This 277, is that the Seymour Highway?

24 A. Yes, ma'am, it is.

25 Q. And that's a fairly major portion of your city; is

1 that correct?

2 A. Yes.

3 Q. Now, you testified that the Braum's Ice Cream was at  
4 2304 Kemp Boulevard.

5 A. Yes, ma'am.

6 Q. Can you point -- here's Kemp Boulevard, I see -- can  
7 you point to where that -- approximately the Braum's is and  
8 make a circle the best you can there?

9 A. It's going to be in this area.

10 Q. Okay. And it faces on to Kemp Boulevard, does it  
11 not?

12 A. Yes, ma'am.

13 Q. And it's on the corner?

14 A. Right.

15 Q. Okay. Now, you did interview a Mr. Ozuna; is that  
16 correct?

17 A. Yes, ma'am.

18 Q. And did you learn that he chased this person with  
19 the purse?

20 A. That's what he related to me.

21 Q. From the paperwork, what route did he go?

22 A. He said that he chased him up -- I think it was  
23 either the 2000 or the 2200 block of Cannon and he lost him  
24 in an alleyway on Tildon Street, so just a --

25 Q. Okay. Can you make a little -- a small mark at

1 Tildon, if you can, so that will be obvious.

2 And are you personally aware of where the purse was  
3 found later?

4 A. No, I'm not.

5 Q. Does this map reflect where on the Seymour Highway  
6 the car was later found?

7 A. I'm not sure of the exact address. I'm not sure  
8 what this block number is. I'm not sure where the car was  
9 located.

10 Q. Okay. Okay.

11 MS. LITTLE: Thank you. That's all I have.

12 THE COURT: Mr. Davis.

13 MR. DAVIS: No further questions.

14 THE COURT: Thank you, Officer. You may step  
15 down, sir.

16 Good morning, sir. May I ask that you raise your  
17 right hand, please.

18 (Witness sworn.)

19 THE COURT: Thank you, sir. Invite you to  
20 have a seat to my left, please.

21 KYLE COOK

22 was called as a witness by the Defendant and, after having  
23 been first duly sworn, testified as follows:

24 By Ms. Little:

25 Q. State your name, please, sir?

1 A. Kyle Cook.

2 Q. Are you a Wichita Falls police detective?

3 A. Yes, ma'am.

4 Q. Is that the same job you held back in August of  
5 1997?

6 A. Yes, ma'am, it is.

7 Q. Were you assigned to work a robbery that happened at  
8 Braum's Ice Cream on that date?

9 A. On what --

10 Q. On August 26th of 1997?

11 A. Yes, ma'am.

12 Q. What was your first involvement, Officer Cook?

13 A. Receiving the original report written by a patrol  
14 officer the morning of the 27th.

15 Q. Okay. And did you review the report?

16 A. Yes, ma'am, I did.

17 Q. Did you learn that Margie Ellis was the victim in  
18 that robbery?

19 A. Yes, ma'am.

20 Q. And what description were you able to get from her  
21 or was obtained from her?

22 A. Description as to what?

23 Q. The suspect.

24 A. It was very vague. Tall slender male with  
25 olive-colored skin, possibly Hispanic or white male.

1 Q. Okay. Did you talk to Mr. Ozuna who was the person  
2 who gave chase?

3 A. No, ma'am, I did not.

4 Q. Are you aware from the paperwork the description  
5 that he gave?

6 A. At the time I was. I'm not right at this moment.

7 MS. LITTLE: May I approach the witness, Your  
8 Honor.

9 THE COURT: You may.

10 MR. DAVIS: I'm going to object to this as  
11 being hearsay, with regard to any description given by Mr.  
12 Ozuna.

13 THE COURT: Objection is overruled.

14 Q. (By Ms. Little) Would you look through this and see  
15 if you can put your finger on where -- this is your paperwork  
16 you're looking at; is that correct?

17 A. This is actually Officer Folmar's, the original  
18 report taken.

19 MR. DAVIS: I reurge my objection at this  
20 time.

21 THE COURT: Objection sustained at this point.

22 Q. (By Ms. Little) At the time you knew this  
23 information; is that correct?

24 A. Yes, ma'am.

25 Q. Have you refreshed your memory from this paperwork?



1 A. Yes, ma'am.

2 Q. What clothing description did you --

3 MR. DAVIS: Again, I'm going to object.

4 THE COURT: Sustained.

5 MR. DAVIS: This was not given to this  
6 Officer.

7 Q. (By Ms. Little) What else did you do in the case,  
8 Officer Cook?

9 A. The morning of the 27th, around 10 o'clock in the  
10 morning, I was notified that a vehicle had been found and it  
11 was used or it was taken in a carjacking out of Arlington and  
12 that some of my victim's property was found by that vehicle.

13 Q. Okay. Did you later learn there was property found  
14 in the vehicle?

15 A. I'm sorry, I didn't hear you.

16 Q. Did you later learn there was property of Margie  
17 Ellis in the vehicle?

18 A. Yes, ma'am, later.

19 Q. Was that car processed?

20 A. Yes, ma'am, it was.

21 Q. Were any prints that were usable lifted?

22 A. I believe that they had taken a comparable, a  
23 partial comparable print, palm print, but there was nothing  
24 of AFIS quality.

25 Q. Okay. Did you talk to Margie Ellis yourself in the

1 investigation?

2 A. Yes, ma'am.

3 Q. And did you get any further description from her?

4 A. No, ma'am.

5 Q. Did you later come on to a suspect, a potential  
6 suspect in this case named John Elbert Warren?

7 A. Yes, ma'am, I was introduced to him.

8 Q. Tell the jury how his name came across your desk.

9 A. The evening of the 27th, patrol officers were sent  
10 to an address on Carla Street in reference to a suspicious  
11 person. As they entered the area, they observed a subject  
12 matching the description and when he observed the police car,  
13 he took off running. After a short chase, they caught up  
14 with the subject and through conversations he had made the  
15 comment that he had recently moved back from Arlington -- I  
16 mean, excuse me, I'm sorry, Irving, Texas. The officer  
17 hearing that he had just come back from Irving and them being  
18 familiar with the information that I had broadcast to the  
19 officers in reference to the carjacking out of Arlington,  
20 they felt that he was also involved in that so they then  
21 brought him to the police station.

22 Q. And did you talk to him when he came to the police  
23 station?

24 A. I did.

25 MS. LITTLE: May I approach the witness.

1 THE COURT: You may.

2 Q. (By Ms. Little) Let me show you what's been marked  
3 for identification purposes as Defendant's 43 and 44. Are  
4 these photographs you took of John Elbert Warren?

5 A. Yes, ma'am.

6 MS. LITTLE: We'll offer these.

7 (Defendant's Exhibit No. 43 and 44 offered)

8 MR. DAVIS: No objection.

9 THE COURT: Admitted.

10 (Defendant's Exhibit No. 43 and 44 admitted)

11 MS. LITTLE: May I have a moment.

12 THE COURT: You may.

13 (Photographs published to jury.)

14 Q. (By Ms. Little) Now, basically, Detective Cook, the  
15 fact that this person ran was sort of how he came across your  
16 purview in regard to this case; is that right?

17 A. Yes, ma'am.

18 Q. And you cleared him later; is that correct?

19 A. Yes, ma'am.

20 Q. But he's a tall man with a thin face?

21 A. Yes, ma'am.

22 MS. LITTLE: That's all I have.

23 Cross-Examination

24 By Mr. Davis:

25 Q. Detective Cook, as I understand, you learned through

1 your investigation that the vehicle that was found later  
2 containing Ms. Ellis's property, that vehicle belonged to a  
3 Sherryl Wilhelm of Arlington, Texas, correct?

4 A. Yes, sir.

5 Q. That it had been taken in a carjacking that same day  
6 earlier in Arlington, Texas, correct?

7 A. It was taken on the 26th.

8 Q. Uh-huh. Okay. You talked with Detective John  
9 Stanton of the Arlington Police Department, didn't you?

10 A. Yes, sir.

11 Q. Did you get from him a description of the individual  
12 who had kidnapped Sherryl Wilhelm in Arlington?

13 A. Yes, sir, a generic description.

14 Q. Uh-huh. Okay. And on August the 28th of 1997, you  
15 went back and talked with Margie Ellis again, didn't you?

16 A. Yes, sir.

17 Q. On that date you had a -- you had already received a  
18 description from Detective John Stanton, right?

19 A. Yes, sir.

20 Q. And as a matter of fact, when you went back and  
21 talked with Ms. Ellis, she gave you a description that  
22 matched that of the description given by Detective Stanton of  
23 Arlington, didn't she?

24 A. Yes, sir.

25 Q. So Ms. Ellis's description on August the 28th

1 matched the description given to you by Detective John  
2 Stanton in your conversations, right?

3 A. Yes, sir.

4 Q. Now, this Mr. Warren, did you ever charge him with  
5 this offense?

6 A. No, sir.

7 Q. Ever arrest him for this offense?

8 A. No, sir.

9 Q. You matched his palmprints against the partial  
10 palmprint recovered from the vehicle, didn't you?

11 A. Compared, yes, sir.

12 Q. Didn't match, did it?

13 A. No, sir.

14 Q. Did you later determine that Mr. Warren was not in  
15 fact a suspect in this offense?

16 A. Yes, sir.

17 Q. Okay. And what led you to that conclusion, sir?

18 A. The descriptions of the suspect given, along with  
19 his interview that was -- that I had done, his cooperation  
20 towards the police officers, and then the prints themselves.

21 Q. So Mr. Warren was never charged, correct?

22 A. Correct.

23 Q. In fact, no one was ever charged with this offense,  
24 were they?

25 A. The robbery?

1 Q. Yes, sir.

2 A. No, sir.

3 Q. Of course, at the time that you were investigating,  
4 you didn't know the name Jedidiah Isaac Murphy, did you?

5 A. No, sir.

6 MR. DAVIS: Thank you, sir. I'll pass the  
7 witness.

8 MS. LITTLE: May I approach the witness.

9 THE COURT: You may.

10 Redirect Examination

11 By Ms. Little:

12 Q. Officer Cook, please look at Defense Exhibit Number  
13 42. We looked at this this morning, did we not?

14 A. Yes, ma'am.

15 Q. You see where it's been marked the route of the  
16 chase by Mr. Ozuna from the Braum's Ice Cream on there?

17 A. (Nods head.)

18 Q. And here's the Seymour Highway. Are you oriented  
19 there?

20 A. Yes, ma'am.

21 Q. Where was the vehicle found? It may not be on this  
22 map, but would you indicate to the jury --

23 A. It would be on down here --

24 Q. Okay.

25 A. -- and towards out of town.

1 Q. Further down the Seymour Highway, Route Number 277?

2 A. Yes, ma'am.

3 Q. Going out of town? Where is Dallas in relation to  
4 this map?

5 A. Dallas would be back this way.

6 Q. You're indicating off to the left of this map where  
7 it says Hamilton Park in the corner; is that right?

8 A. Yes, ma'am.

9 Q. Where does the Seymour Highway go?

10 A. To Holiday, Seymour, Texas.

11 Q. Okay. And did the car appear to be broken down to  
12 you?

13 A. Yes, ma'am.

14 Q. What made you think that?

15 A. The large amounts of oil found leading up to the  
16 vehicle and then around the vehicle.

17 Q. Okay. Now, you testified awhile ago in response to  
18 Greg Davis's question that the descriptions were the same.  
19 The description you had from Margie Ellis was a light-skinned  
20 Hispanic or a white male; is that right?

21 A. Right.

22 Q. Is that all the description that you had from Margie  
23 Ellis?

24 A. Yes, ma'am, stated it was generic.

25 Q. And you're aware there was a different

1 description --

2 MR. DAVIS: I'm going to object to that again  
3 as being hearsay.

4 THE COURT: Objection is overruled. The  
5 matter's been opened sufficiently for the question to be  
6 asked.

7 MR. DAVIS: I haven't asked any questions  
8 about any other descriptions, Your Honor.

9 THE COURT: There has been some questions  
10 about the identity of the perpetrator that's been developed.  
11 You may ask the question.

12 Q. (By Ms. Little) There's another description from  
13 the person who chased the man with the purse of Ms. Ellis; is  
14 that correct?

15 A. I'm sorry?

16 Q. There is another description from Mr. Ozuna; isn't  
17 that correct?

18 A. Yes, ma'am.

19 Q. And that description is a Hispanic male, 170 pounds;  
20 is that right?

21 A. Yes, ma'am.

22 Q. Basically, Detective Cook, I think you explained to  
23 me that you considered this case a recovery for Arlington?

24 A. Yes, ma'am, as far as our department was concerned,  
25 with the lack of evidence -- I mean it was pretty much a --



1 just a recovery mission for Arlington in reference to the  
2 vehicle.

3 Q. Okay. And once that car was processed, did you then  
4 get the car back to Arlington at some point?

5 A. Yes, ma'am.

6 Q. Do you know how long that took?

7 A. Not right offhand, I don't.

8 Q. Now, this -- this robbery of Ms. Ellis in Wichita  
9 Falls was about 8:30 at night on the 26th of August, 1997; is  
10 that right?

11 A. Yes, ma'am.

12 Q. And it was the next morning that the car was  
13 recovered broken down on the Seymour Highway?

14 A. Yes, ma'am.

15 MS. LITTLE: That's all I have. Thank you.

16 Recross-Examination

17 By Mr. Davis:

18 Q. Detective --

19 MS. LITTLE: Oh, I will offer this for all  
20 purposes.

21 (Defendant's Exhibit No. 42 offered)

22 MR. DAVIS: No objection.

23 THE COURT: Admitted.

24 (Defendant's Exhibit No. 42 admitted)

25 Q. (By Mr. Davis) Detective Cook, do you know how long

1 that car had been there on the Seymour Highway?

2 A. No, sir, I do not.

3 Q. As I understand it, the car was broken down. It was  
4 not capable of being driven back to Dallas, if it had come  
5 from Dallas; is that correct?

6 A. Yes, sir.

7 Q. Where is Childress in relationship to Wichita Falls?

8 A. West.

9 Q. About how far west of Wichita Falls would it be?

10 A. I would say an hour.

11 Q. I guess if you're coming from Dallas to get to  
12 Childress, you can go right through Wichita Falls, can't  
13 you?

14 A. Yes, sir, around the back side.

15 Q. Uh-huh. Do you know whether or not there's a boot  
16 camp in Childress?

17 A. No, sir, I do not.

18 Q. Possible there may be one in Childress, but you're  
19 just not aware of it?

20 A. Yes, sir.

21 Q. Do you know whether or not the defendant had ever  
22 spent any time at that boot camp in Childress, Texas.

23 A. I do not know, sir.

24 MS. LITTLE: Hearsay.

25 MR. DAVIS: That's all I have.

Further Redirect Examination

By Ms. Little:

Q. Just one other thing, Officer Cook.

You know the purse was found of Ms. Ellis on  
Minnetaska Avenue; is that right?

A. Yes, ma'am.

Q. Would you show the jury where that is?

A. (Witness complies.)

Q. So if I make a mark right here, that's where the  
purse was found; is that about right? On Minnetaska?

So there's several locations here in this area of  
Seymour Highway and where the Braum's Ice Cream is, where the  
chase happened, and you know the chase went up Buchanan to  
Tildon and the purse was found back over here; is that right?

A. Right.

Q. Okay.

MS. LITTLE: That's all I have. Thank you.

MR. DAVIS: No further questions.

THE COURT: Thank you, Detective. You may  
step down.

May he be excused?

MR. DAVIS: No objection.

MS. LITTLE: No objection.

THE COURT: You are excused, sir.

THE WITNESS: Thank you.

1 THE COURT: Defense may continue.

2 MS. LITTLE: We'll call Donnie Kines.

3 While Jennifer gets that next witness, Your Honor,  
4 I'd offer Defense Exhibit Number 45 which is a stipulation  
5 signed by both sides and by Jim Murphy.

6 (Defendant's Exhibit No. 45 offered)

7 MR. DAVIS: No objection.

8 MS. LITTLE: May I publish.

9 THE COURT: Stipulation is admitted. You  
10 may.

11 (Defendant's Exhibit No. 45 admitted)

12 MS. LITTLE: Comes now the defense --  
13 defendant's attorney and the District Attorneys and agrees to  
14 the following stipulation: On August 26th of 1997, in the  
15 afternoon, Margie Ellis, a 65-year-old woman, was at a  
16 Braum's Ice Cream store in Wichita Falls. A man ran up to  
17 her, pushed her down, and grabbed her purse. She did not get  
18 a good look at the person who took her purse, partly because  
19 her vision is not very good. End of stipulation.

20 THE COURT: Call your next witness.

21 Raise you right hand, please, sir.

22 (Witness sworn.)

23 THE COURT: Thank you. Have a seat, please.

24 MS. LITTLE: Your Honor, can all Wichita Falls  
25 people be released?

1 MR. DAVIS: No objection.

2 THE COURT: They may.

3 ROY DONALD TOLAR

4 was called as a witness by the Defendant and, after having  
5 been first duly sworn, testified as follows:

6 Direct Examination

7 By Ms. Little:

8 Q. State your name, please, sir.

9 A. My name is Roy Donald Tolar.

10 Q. Okay.

11 THE COURT: Last name again, please?

12 THE WITNESS: Tolar.

13 Q. (By Ms. Little) How do you spell Tolar?

14 A. T-o-l-a-r.

15 Q. Okay. You go by Donnie, don't you?

16 A. Yes, ma'am.

17 Q. How old are you, Donnie?

18 A. I'm 27 years old.

19 Q. Where do you live?

20 A. I live in Sulphur Springs, Texas.

21 Q. And how long have you lived there?

22 A. About 15 years.

23 Q. Who do you live with?

24 A. I live with my foster father.

25 Q. What is his name?

1 A. Garth Looney.

2 Q. Is he a rancher, Donnie?

3 A. Yes, ma'am, he's a retired dairy farmer.

4 Q. And do you work?

5 A. Yes, ma'am.

6 Q. Where do you work?

7 A. I work A.K. Gillis & Sons.

8 Q. What kind --

9 THE REPORTER: I'm sorry?

10 THE WITNESS: For A.K. Gillis & Sons.

11 Q. (By Ms. Little) I'm sorry. I didn't hear what you  
12 said.

13 A. I work for A.K. Gillis & Sons. They're an  
14 incorporated contractor, do heavy dirt work and construction.

15 Q. Okay. Specifically, what do you do in your job?

16 A. I drive a truck.

17 Q. And that's fairly heavy labor for you, right?

18 A. Yes, ma'am.

19 Q. You work hard?

20 A. Yes, ma'am.

21 Q. How long have you worked for those people?

22 A. I've been there three years this time.

23 Q. Okay. Had you worked for them previously?

24 A. Yes, ma'am.

25 Q. How long had you worked for them before?

1 A. Probably a couple of years.

2 Q. Okay. Do you know Jedidiah Isaac Murphy who we call  
3 Jim Murphy?

4 A. Yes, ma'am, he's my brother.

5 Q. Okay. You're older than Jim; is that right?

6 A. Yes, ma'am.

7 Q. Do you remember how old you were when y'all left  
8 your parents' home?

9 A. Yes, ma'am. I was about 7 years old.

10 Q. Okay. And who were your parents, Donnie?

11 A. Roy Donald Kines and Hope Abbott.

12 Q. Okay. How many kids were in the family at that  
13 time?

14 A. There are six of us altogether. There was three  
15 boys and three girls.

16 Q. Okay. Would you name the boys?

17 A. It was me, Jim Ed, and Bob.

18 Q. Okay. Were the boys?

19 A. Yes, ma'am.

20 Q. And were all of these children Hope's and Donnie  
21 Kines', your dad's children?

22 A. Yes, ma'am.

23 Q. Who were the girls?

24 A. Tonya, Tammy, and Holly.

25 Q. Okay. Who was the oldest of the girls?

1 A. Tonya.

2 Q. And how old was she at that time?

3 A. She was probably 14 or 15.

4 Q. You're not sure exactly?

5 A. No, ma'am.

6 Q. Did there come a time when you left the home of your  
7 parents, Hope Abbott and Donnie Kines?

8 A. Yes, ma'am.

9 Q. Do you have much memory of living with your parents  
10 before you left?

11 A. Yes, ma'am.

12 Q. What kinds of things do you remember as your  
13 experiences?

14 A. Just a regular home, you know, until everything  
15 broke down and we all left.

16 Q. Okay. What caused the breakdown, do you know?

17 A. Just divorce and, you know, family trouble.

18 Q. Okay. Was there drinking in the home, or do you  
19 know at that time?

20 A. Yes, ma'am, my daddy drank.

21 Q. Okay. When you left the home, did all six of you  
22 leave?

23 A. Yes, ma'am.

24 Q. And where did you go, Donnie?

25 A. Me and Jim Ed and my little sister went to live with



1 my dad's mother and daddy which was my grandparents and they  
2 raised us until they got deathly ill.

3 Q. Okay. What are their names, Donnie?

4 A. Margaret Kines and Ed Kines.

5 Q. Okay. And were they your dad's parents?

6 A. Yes, ma'am.

7 Q. Do you know about how long you lived with them?

8 A. Off and on about probably 10 years.

9 Q. Okay.

10 A. To about '86.

11 Q. Okay. Did you ever go to Buckner's Orphanage?

12 A. Yes, ma'am.

13 Q. Do you know how old you were when that happened?

14 A. I was probably -- probably 6 years old.

15 Q. How old was Jim then?

16 A. Jim was probably -- I might have been 7 or 8. Jim  
17 was probably 5 or 6 because there's a couple of years  
18 difference in our age.

19 Q. Okay. Did you stay at Buckner's very long?

20 A. I don't remember. Seemed like forever, but it might  
21 not have been but maybe six, eight weeks, maybe.

22 Q. Okay. And then where did you go?

23 A. I think we went back to my grandparents', and then  
24 we later on got adopted by the Tolars.

25 Q. Okay. Now, your grandparents were elderly; is that

1 right?

2 A. Yes, ma'am.

3 Q. How many of you did they try to take care of?

4 A. Well, they had all six of us from time to time, but  
5 later on they just had me and my little brother and my little  
6 sister.

7 Q. Okay. Which little sister?

8 A. Holly Jo.

9 Q. All right. Do you know when you were adopted by the  
10 Tolars?

11 A. I believe it was sometime back in '83, I think.

12 Q. And do you know how old you and Jim were then?

13 A. I was 9 or 10 years old, and Jim Ed was 7 or 8.

14 Q. Okay.

15 A. Something like that.

16 Q. Did you have any particular problems when you were a  
17 little kid, Donnie?

18 A. Not anymore than just any other human being, you  
19 know, hyperactive and just -- you know, just kid stuff.

20 Q. Uh-huh. Now, when you went to live with the Tolars,  
21 did you have problems in that household?

22 A. We had a few problems there.

23 Q. Okay. What kind of problems did you have?

24 A. One, they was mean to my little brother all the  
25 time. And, you know, we wasn't their biological kids, and,

1 you know, probably know how all that goes. You know, we got  
2 in a little bit more trouble than the rest of the boys did.  
3 We had to go to bed earlier than they did, a bunch of things  
4 different.

5 Q. Okay. Did it seem like to you the treatment wasn't  
6 even between you and Jim and the children of the Tolars?

7 A. It never was. That's why we're not there anymore.

8 Q. Do you know how long you were at the Tolar's?

9 A. Four years, probably.

10 Q. Okay. Do you remember that Ms. Tolar, Celeste  
11 Tolar, took you for counseling?

12 A. Yes, ma'am.

13 Q. Do you -- what do you remember, if anything, about  
14 that?

15 A. I don't remember a whole lot about it. I was a kid,  
16 but a lot of it -- 90 percent was taking up for my little  
17 brother all the time.

18 Q. Okay. Was Jim a timid kid then?

19 A. Yes, ma'am.

20 Q. When you were with the Tolars, did you ever do  
21 anything to their house?

22 THE COURT: Can you be more specific?

23 Q. (By Ms. Little) That was destructive?

24 A. Yes, ma'am, I did, when I --

25 Q. What did you do?

1 A. They locked me in a room a couple of times. I  
2 believe I tore the door down getting out of there.

3 Q. And do you know why they locked you in a room?

4 A. Not really. I wouldn't lock nobody in a room for  
5 nothing.

6 Q. But you did have some hyperactivity, didn't you?

7 A. Yes, ma'am.

8 Q. And what did you do to their house as a result of  
9 some of the treatment that you received?

10 A. Well, I got out of that room. That's all I  
11 remember. That's basically all I remember what happened.  
12 They locked me in a room and I come out of there. I don't  
13 remember if I went through the window, the door, or the wall,  
14 but I come out.

15 Q. Okay. Do you remember which room you were locked  
16 in?

17 A. Yes, ma'am.

18 Q. Which room was it?

19 A. It was the first bedroom on the left going down the  
20 hallway.

21 Q. Okay. Did the Tolars ultimately give you up and not  
22 keep you at their home?

23 A. Yes, ma'am.

24 Q. Do you know whether or not Jim had a choice to stay  
25 with the Tolars or not?

1 A. I believe they both wanted us to leave.

2 Q. Did you break out the windows in their house,  
3 Donnie?

4 A. The night we left, I did because they wouldn't let  
5 me in the house. They was whooping up on little brother, a  
6 bunch of stuff went bad, and I came back in the house. I  
7 think I -- I believe I busted out a sliding glass window, I  
8 think.

9 Q. Okay.

10 A. Come back in because they were beat -- they had two  
11 or three of them on my little brother. I don't remember all  
12 the circumstance. But they were whooping up on him.

13 Q. Now, when you say two or three of them, who would  
14 that be?

15 A. I believe it was their other three sons, their  
16 biological sons.

17 Q. Okay.

18 A. They was whooping up on my little brother Jim and I  
19 came in there and got them off of him.

20 Q. Okay. Where did you go -- did you go to the Van  
21 Zandt County Children's Shelter when you left the Tolars?

22 A. Yes, ma'am, Fruitvale, Texas.

23 Q. And do you know how long you were there?

24 A. Probably a couple of months.

25 Q. Did Jim get placed from there?

1       A.    Jim didn't stay there. I think he didn't stay there  
2 very long at all. I think he later got adopted pretty quick  
3 afterwards.

4       Q.    Okay. Do you know anything about that person? His  
5 next adoption?

6       A.    It was Bob and Samantha Murphy out of Edgewood,  
7 Texas.

8       Q.    Okay. And how long did you stay at Van Zandt  
9 Children's Shelter?

10      A.    Like I said, a couple of months, six or eight  
11 months.

12      Q.    Where did you go then?

13      A.    The State picked up custody of me then, and I went  
14 to live with a foster family in Sulphur Springs. And one I'm  
15 still acquainted with now.

16      Q.    Okay. And so have you been with Garth Looney a long  
17 time?

18      A.    Yes, ma'am, since about '86.

19      Q.    Okay. The problems that you had with your  
20 hyperactivity and stuff, did you ever take medication for  
21 that?

22      A.    They tried to give me nearly everything in the world  
23 for it, but I didn't take a whole lot of it. Some of it made  
24 me more hyperactive. Some of it just -- boy, I couldn't  
25 even -- some of it I couldn't even -- you know, just felt

1 like I was drunk or something, so I quit taking a lot of it.

2 Q. Okay. Do you know if you ever took Ritalin or  
3 anything --

4 A. I took Ritalin, Sidelar (phonetic), Ativan. I took  
5 Thorazine, Lithium. I took everything you can imagine. But  
6 I didn't take it very long, because a lot of it, like I said,  
7 made me where I couldn't even hardly function.

8 Q. Okay. Now, how long was it from the time you left  
9 your mother Hope until you saw her again?

10 A. Well, there was a time in there probably I didn't --  
11 from about '83 to about '90 probably 2, I never seen my mom  
12 very much. Jim Ed never seen her till -- just about '83  
13 until about -- Jim, he was about 17, 18 years old.

14 Q. Okay.

15 A. When I re -- reunited him, told him where everybody  
16 lived. I found them. I've done -- did a lot of little, you  
17 know, research and asked a bunch of questions, got a bunch of  
18 numbers, and I got ahold of them. I believe I give Jim the  
19 number and everything after he graduated high school.

20 Q. After that, y'all were back in touch with your  
21 mother; is that right?

22 A. Yes ma'am.

23 Q. But through those years you had not been?

24 A. No, ma'am.

25 Q. In fact, was there a reunion of the family because

1 your sister Tonya married?

2 A. Yes, ma'am.

3 Q. Do you remember Jim being trouble to anybody when he  
4 was a little kid?

5 A. Yes, ma'am, I do.

6 Q. What kind of trouble would he get into?

7 A. Just like most of us, hyperactivity, and Jim was,  
8 you know, he -- just kid stuff mainly, wasn't nothing real  
9 serious.

10 Q. Uh-huh. Do you know how many Christmases you spent  
11 with the Tolars?

12 A. Probably three.

13 Q. Do you have any memory of how long your therapy was  
14 when you went with Celeste to the Canton MHMR?

15 A. Off and on for I imagine a few months, I guess --  
16 however -- it wasn't very long.

17 Q. And then was it pretty soon after that that they  
18 took y'all to the children's shelter?

19 A. Not when we went to the children's shelter. I  
20 believe they called the law and the law come picked us up and  
21 took us out there.

22 Q. Okay. Had you hidden under a house?

23 A. I was hiding everywhere. I was scared at the time.

24 Q. Do you consider Jim to be the person you're closest  
25 to in your family?



1 A. Yes, ma'am.

2 Q. Do you believe he considers you the same?

3 A. Yes, ma'am.

4 Q. Do you know how many times your dad had been married  
5 before he married your mother?

6 A. I don't believe anybody -- he may have been once,  
7 but I don't think so.

8 Q. Okay. And did y'all -- did you and Jim have any  
9 good times when you were little?

10 A. Yes, ma'am.

11 Q. What kinds of things did you do?

12 A. We rode bikes, went camping, fishing, hunting.

13 Q. Okay. After y'all went to the children's shelter  
14 and you were separated, how long was it before you were ever  
15 together again?

16 A. It was a good while because the people that adopted  
17 my little brother, they didn't want me to see my little  
18 brother. They didn't want me to be around him. I kind of  
19 went behind their back, kind of had -- I might have even  
20 caused Jim some trouble, you know, getting back in touch with  
21 him. They didn't want me -- they didn't want me to have  
22 nothing to do with him. You know, when somebody adopts  
23 somebody, they generally want you to kind of forget about the  
24 past and start over today and go on from there.

25 Q. Okay.

1 A. But I got ahold of him, and they eventually let me  
2 visit with him and come around time from time. They didn't  
3 care for it a whole lot, but it's my little brother and I  
4 enjoyed seeing him.

5 Q. Do you know anything about the Murphys that adopted  
6 Jim after y'all left the Tolars?

7 A. Not a whole lot personally. I know what -- I know  
8 just coming over to their house and visiting my brother.

9 Q. Okay.

10 A. I didn't see a whole lot of them.

11 MS. LITTLE: That's all I have.

12 Cross-Examination

13 By Mr. Davis:

14 Q. Mr. Tolar, my name is Greg Davis. You and I have  
15 never met, have we?

16 A. No, sir.

17 Q. As far as I remember we've never talked either, have  
18 we?

19 A. No, sir.

20 Q. Mr. Tolar, I want to talk to you about your  
21 grandparents a little bit. Your grandparents were very good  
22 to you, weren't they?

23 A. Yes, sir, they was.

24 Q. They were very good to the defendant, also?

25 A. Yes, sir.

1 Q. Is that fair to say both of them loved the defendant  
2 very much?

3 A. They loved all of us.

4 Q. Treated -- treated the defendant well?

5 A. Yes, sir.

6 Q. Tried to -- tried to teach him what he needed to  
7 know as a child?

8 A. Yes, sir.

9 Q. They were good people, weren't they?

10 A. Yes, sir.

11 Q. And while the defendant was in your grandparents  
12 home, he had no problems at all, did he?

13 A. Just hyperactivity. Jim was always real hyper, you  
14 know, he -- you know, I was, too, but I don't know too many  
15 kids that ain't really.

16 Q. Uh-huh. But as far as when you're a kid, I mean  
17 they tried to teach y'all right from wrong, didn't they?

18 A. Yes, sir.

19 Q. Discipline when you needed discipline, correct?

20 THE COURT: You have to answer yes or no,  
21 sir.

22 A. Yes, sir.

23 Q. (By Mr. Davis) Gave you love when you needed love?

24 A. Yes, sir.

25 Q. I mean, certainly the defendant and you both felt

1 like you were very much wanted in your grandparents' home,  
2 right?

3 A. Yes, sir.

4 Q. And again, while you and the defendant were in your  
5 grandparents' home, the defendant was not mistreated in any  
6 way, was he?

7 A. My dad was an alcoholic. He got a little rough from  
8 time to time, but not as far as just -- nothing -- you know  
9 abuse. My dad scared me quite a bit.

10 Q. Yeah. No abuse by your grandparents?

11 A. No, sir.

12 Q. No physical or sexual abuse by your father?

13 A. No, sir.

14 Q. Would the same be true from your mother, no  
15 physical, sexual abuse from her, either?

16 A. No, sir.

17 Q. As I understand, you and the defendant were only at  
18 Buckner's for about six to eight weeks before the defendant  
19 was -- and both of you were adopted by the Tolars in Grand  
20 Saline, right?

21 A. Yes, sir.

22 Q. Now, when you were with the Tolars, I mean, you were  
23 diagnosed as having attention deficit disorder yourself,  
24 weren't you?

25 A. Yes, sir. I still got it, I imagine.

1 Q. That's the reason why the Tolars took y'all -- took  
2 you for counseling, wasn't it?

3 A. Yes, sir.

4 Q. That's the reason why they tried certain medications  
5 with you to try to control that hyperactivity, right?

6 A. Yes, sir.

7 Q. Now, when y'all were with the Tolars -- now, isn't  
8 it a fact that the Tolars tried as best they could to make  
9 you and the defendant fit into that family along with their  
10 other three sons?

11 A. No, sir, they didn't.

12 Q. As a matter of fact, I mean, they voluntarily took  
13 the two of you in even though they already had three sons to  
14 take care of, didn't they?

15 A. Yes, sir.

16 Q. Do you remember that the Tolars took y'all to Sunday  
17 school along with the other three boys, didn't they?

18 A. They did, but like I said them people wasn't -- they  
19 wasn't as good as you might think they was.

20 Q. My question to you, sir, was: Did the Tolars take  
21 you and the defendant, along with their other three sons, to  
22 Sunday school?

23 A. Yes, sir.

24 Q. And y'all attended church regularly with the Tolars,  
25 didn't you?

1 A. Yes, sir.

2 Q. Because the Tolars attended church on a very regular  
3 basis, didn't they?

4 A. Yes, sir.

5 Q. The Tolars had no alcohol in their home, did they?

6 A. I never seen none. I never looked for none, no,  
7 sir.

8 Q. Okay. You never did see Terry or Celeste Tolar  
9 drinking in that house, did you?

10 A. No, sir.

11 Q. Do you know whether or not the defendant was talked  
12 to by Terry Tolar about the use of alcohol while y'all were  
13 living in that home?

14 A. I don't remember none of that.

15 Q. Do you know whether he -- whether he counseled him  
16 or cautioned him about the use of alcohol while he was living  
17 in that home?

18 A. I imagine he counseled us about everything.

19 Q. Okay.

20 A. Yes, sir.

21 Q. What sort of things would Terry Tolar counsel y'all  
22 about?

23 A. Just stuff that was maybe not going right.

24 Q. So he would sit down and talk with you, wouldn't he?

25 A. Yes, sir. He wasn't there all the time. He stayed

1 gone two or three days at a time. He would come in for a day  
2 or two or something. I don't remember how all that worked,  
3 but --

4 Q. I mean, Terry Tolar was a firearm, wasn't he?

5 A. I believe he was, yes, sir.

6 Q. He would be on for 24 hours and be off for a certain  
7 period of time and then he'd go -- have to go back on duty,  
8 wouldn't he?

9 A. Yes, sir.

10 Q. During the time Celeste Tolar was there at the home,  
11 wasn't she?

12 A. Yes, sir.

13 Q. You and the defendant could talk to her about what  
14 was happening, too, couldn't you?

15 A. Yes, sir.

16 Q. Okay. So if something was happening, I mean Celeste  
17 Tolar would let you talk with her, wouldn't she?

18 A. She let you talk to her, but she didn't listen, but,  
19 yes, sir.

20 Q. Okay. So you talked with her, she tried to help  
21 you, too, didn't she?

22 A. She never tried to help me none.

23 Q. Well, wasn't she the one that took you for  
24 counseling?

25 A. She took me for counseling, but I don't know what

1 reason for that was, anyway.

2 Q. You didn't consider that to be any help by Celeste  
3 Tolar?

4 A. I didn't think I had that kind of problem, you know,  
5 at the time to need counseling, but you're right, we did go  
6 to counseling.

7 Q. As a matter of fact, when the defendant was ready to  
8 go to school, Terry Tolar actually enrolled the defendant in  
9 school, didn't he?

10 A. I don't know -- I don't know.

11 Q. You don't remember that?

12 A. Huh-uh.

13 Q. Took an active interest in how he did in school,  
14 didn't he?

15 A. Yes, sir.

16 Q. Same with you, I guess, didn't he? He took an  
17 interest in how you were doing, how your grades were?

18 A. We had to go to school. We got up, caught the bus  
19 and rode bikes to school everyday. You know, we couldn't  
20 just skip out on not going to school.

21 Q. Okay. He -- as a matter of fact, he did more than  
22 that. Didn't he also enroll the defendant in T-ball, in  
23 other activities outside the school?

24 A. I don't remember none of that.

25 Q. You don't remember that?



1 A. No, sir.

2 Q. You don't remember the defendant actually playing  
3 T-ball while he was there at the Tolar home?

4 A. I remember us playing baseball or T-ball, but I  
5 don't remember how it all got placed.

6 Q. Okay. So you're going to church regularly while  
7 you're with the Tolars, right?

8 A. Yes, sir.

9 Q. You're enrolled in school, correct?

10 A. Yes, sir.

11 Q. You're at other activities such as baseball while  
12 you're living with the Tolars, right?

13 A. Yes, sir.

14 Q. There's no violence between Terry Tolar and Celeste  
15 Tolar going on when you're with them, is there?

16 A. Not with them, him and her.

17 Q. So there's no domestic violence, correct?

18 A. There was with me.

19 Q. Well, I'm talking about between Mrs. Tolar and Mr.  
20 Tolar.

21 A. Not --

22 Q. You didn't ever see them fight or have any sort of  
23 violence, did you?

24 A. No, not that I -- no, sir.

25 Q. They're not drinking in that home, are they?

1 A. No, sir.

2 Q. They're not doing drugs in that home, are they?

3 A. No, sir.

4 Q. But wouldn't it be fair to say that while you're  
5 there, I mean, you're having some behavioral problems, aren't  
6 you?

7 A. Not -- not that -- none that I remember really.

8 Q. Well, when you tore down the door there at the  
9 Tolar's home, I mean that took quite a bit of force to tear  
10 that door down, didn't it?

11 A. Yes, sir, it did. But when you get hit and beat on  
12 like I was and get locked in a room, you want to come out  
13 there. Them people -- them people weren't good to me and I'm  
14 not --

15 Q. I'm sorry. Your response is --

16 THE COURT: Volunteer an answer only to the  
17 question asked, please.

18 Q. (By Mr. Davis) Your response then is, yes, it did  
19 take a lot of force to knock that door down? Is that your  
20 response?

21 A. Yes, sir.

22 Q. And as a matter of fact, isn't it true that the  
23 Tolars reluctantly put you and the defendant over there at  
24 that children's shelter because they certainly -- they simply  
25 could not control your behavior and it was having a negative

1 impact on the family; isn't that true?

2 MS. LITTLE: I object to that unless he knows  
3 the answer.

4 THE COURT: Can you answer that of your own  
5 personal knowledge, sir, or not?

6 THE WITNESS: No, sir.

7 THE COURT: Objection sustained.

8 Q. (By Mr. Davis) Your behavior was negatively  
9 impacting that family, wasn't it?

10 A. Not that I remember.

11 Q. You don't think that any of your behavior had any  
12 negative impact on either the parents or the other three  
13 children? You don't remember that?

14 A. I remember.

15 Q. Well, the government didn't take you out of that  
16 house because of any abuse going on, did they?

17 A. No. They probably would have if I'd got ahold of  
18 them.

19 Q. When you went over there to the children's shelter,  
20 Mr. Tolar, you talked with doctors, you talked with  
21 counselors, didn't you?

22 A. Yes, sir.

23 Q. You didn't mention a single word about any abuse  
24 going on in that house, did you?

25 A. I told them what all went on while we left.

1 Q. And were you around when the defendant talked with  
2 the counselors, doctors, and other workers over there at the  
3 children's shelter?

4 A. No, sir.

5 Q. So you don't know what he may have said?

6 A. No, sir.

7 Q. Did you talk with him about telling, hey, you got to  
8 tell these people, you know, man, you've been whooped up bad,  
9 you've been abused, treated real poorly over there at the  
10 Tolars, you've got to tell these people what went on? You  
11 told him that, didn't you?

12 A. I told them what they did to me.

13 Q. But you don't know what the defendant said, do you?

14 A. I wasn't there, I don't guess.

15 Q. Have you ever seen the records from that children's  
16 shelter? Have you ever seen -- have you ever seen the  
17 defendant's records? Have you been shown those records?

18 A. No, sir. I don't think he stayed there very long to  
19 have any records.

20 Q. Do you know whether or not Dr. Richard Ingram  
21 examined him when he got over there to that children's  
22 shelter?

23 A. He may have, but he wasn't there but maybe a  
24 short -- very short time.

25 Q. Dr. Ingram was your family doctor, wasn't he?

1 A. I believe his name was Mr. Ingram.

2 Q. Yeah. Ingram -- did Dr. Ingram come over and see  
3 you?

4 A. I seen somebody.

5 Q. So you don't know what the defendant may have told  
6 Dr. Ingram, do you?

7 A. I have no clue.

8 Q. Because you haven't been shown those records, have  
9 you?

10 A. No, sir. But whatever it was, I imagine it was  
11 true.

12 Q. So you got to assume whatever is in those records is  
13 true, right?

14 A. Yes, sir. Terry Tolar was one mean rough man  
15 whether you know it or not. And he was rough with me and my  
16 little brother.

17 Q. Mr. Tolar, will you do me -- do me a favor and just  
18 wait for the next question? Would you do me that favor?

19 A. Yes, sir.

20 Q. Thank you. When the defendant got over to the  
21 Murphy's home, do you know how the defendant was acting over  
22 there?

23 A. No, sir.

24 Q. Do you know when he started stealing at the Murphy's  
25 home?

1 A. No, sir.

2 MS. LITTLE: I'll object to that as assuming  
3 facts not in evidence at this time.

4 THE COURT: Sustained.

5 Q. (By Mr. Davis) Do you know that he's been convicted  
6 of burglary and theft? Do you know that?

7 A. No, sir.

8 Q. You didn't keep up with his behavior and his  
9 activities over at the Murphy home?

10 A. They wouldn't let me see him for two or three  
11 years. I had to go behind their back to visit him.

12 Q. When you visited with the defendant, did he ever  
13 tell you, hey, I'm out here drinking all the day and smoking  
14 pot everyday while I'm going to high school? He tell you  
15 that?

16 A. No, sir, he didn't.

17 Q. Well, do you think he was shooting straight with you  
18 about what was going on in his life?

19 A. That's my little brother. He ain't never lied to me  
20 before.

21 Q. But he didn't tell you he was drinking all the time,  
22 did he?

23 A. No, sir. I don't think nobody just talks about that  
24 anyway. Nobody tells about their drinking problem or drug  
25 problem.

1 Q. Didn't tell you that he was starting to do drugs  
2 over there at the Murphy's?

3 A. No, sir.

4 Q. Did he tell you that -- that he went out and he got  
5 convicted?

6 A. No, sir.

7 Q. Didn't share that information with you either?

8 A. No, sir.

9 Q. Did he tell you he went to boot camp?

10 A. I believe I knew he went to boot camp, yes, sir.

11 Q. How did you find that out?

12 A. I got a letter from him.

13 Q. As far as how the Murphys treated him, Mr. Murphy  
14 treated him just like his son, didn't he?

15 A. Well, he wouldn't let him visit me so -- that ain't  
16 too human like, I don't think.

17 Q. As a matter of fact, isn't it true that when he was  
18 over there at the Murphys, that Mr. Murphy paid more  
19 attention to the defendant than he did his own biological son  
20 Matt?

21 A. I have no clue.

22 Q. Because you don't -- you don't know what happened in  
23 that home, do you?

24 A. Because they wouldn't -- they wouldn't let me visit.

25 Q. Do you know what happened in that home between Mr.

1 Murphy and the defendant?

2 A. No, sir, I don't. I didn't live there.

3 Q. Now, would you please wait for my next question.

4 Can you do that for me?

5 A. Yes, sir.

6 Q. Thank you. And as I understand when the defendant  
7 was 17 or 18 years of age, he was reunited with his mother,  
8 Hope Abbott, wasn't he?

9 A. Yes, sir.

10 Q. Reunited with the whole family, Tonya, other  
11 siblings?

12 A. Yes, sir.

13 Q. Correct?

14 A. Yes, sir.

15 Q. So from the age 17 to 18, he's had full contact with  
16 his family, hasn't he?

17 A. Yes, sir.

18 Q. When is the last time that you talked with the  
19 defendant?

20 A. Whenever all that -- about seven or eight months  
21 ago.

22 Q. Haven't talked with him since?

23 A. I've -- letters, not verbally, you know, face to  
24 face.

25 Q. Let's see, he's been sending you letters from the



1 jail?

2 A. I would write him occasionally, and he writes me.

3 Q. When did he admit that he shot Ms. Cunningham?

4 A. He's never told me nothing about it.

5 Q. He's never discussed that with you?

6 A. He's never admitted nothing. I don't know what all  
7 happened.

8 Q. So this person who's closer to you than anybody else  
9 in the world has never admitted anything to you, right?

10 A. He's never discussed none of that with me.

11 Q. Did he ever discuss Mandy Kirl with you?

12 A. I don't even know who Mandy Kirl is, no, sir.

13 Q. Did he ever mention Sherryl Wilhelm to you?

14 A. No, sir.

15 Q. Did he ever mention the numerous fights that he had  
16 with Chelsea Willis?

17 A. I knew about a few of them.

18 Q. He got violent with Chelsea Willis on more than one  
19 occasion, didn't he?

20 A. I have no clue how many times that took place. I  
21 just know that I've know that it has took place.

22 Q. Do you know whether or not he broke Chelsea Willis's  
23 nose once?

24 A. I have no idea.

25 Q. Did you ever ask the defendant, hey, tell me what

1 happened? Did you really kill that woman or not? Did you  
2 ever ask him that question?

3 A. No, sir, I haven't.

4 Q. Never even asked him whether he guilty of this  
5 offense or not?

6 A. No, sir.

7 Q. It didn't really matter to you, did it?

8 A. Yes, it mattered to me.

9 Q. But you never asked him?

10 A. I haven't asked him. I live a hundred miles from  
11 here.

12 Q. Never in a single letter that you wrote to him did  
13 you say, hey, by the way, brother, will you tell me, did you  
14 actually shoot that woman in the head like they said? You  
15 never asked him that question?

16 A. No, sir.

17 Q. Sir, would it be fair to say that there's a lot of  
18 things about the defendant's life that you really have no  
19 personal knowledge about?

20 A. I know everything about him. I know he's tried to  
21 get help a number of times the last many, many years.  
22 Terrell State wouldn't have him, wouldn't help him. He's  
23 been to Glen Oaks. He's been to two or three places. None  
24 of them really have never succeeded on giving him any kind of  
25 help.

1 Q. Have you -- you looked through all those records?

2 A. No, sir, but I know he has, because he was not in  
3 jail at the time.

4 Q. So you've never reviewed really what happened at  
5 Glen Oaks or Timberlawn or Andrew Center? You really don't  
6 know what really happened at those institutions, do you?

7 A. He was trying to seek some help.

8 Q. Is that from what he's told you?

9 A. That's what I know.

10 Q. Oh, so you don't know that when he went to Glen Oaks  
11 and Oak Haven and all these other places, he routinely  
12 discharged himself early from those institutions --

13 MS. LITTLE: I object to that as assuming  
14 facts not in evidence.

15 THE COURT: Objection is overruled in light of  
16 the testimony the witness has previously given.

17 Q. (By Mr. Davis) And you say that you know  
18 everything. Do you know that?

19 A. No, sir, I don't. When you go to a doctor, you just  
20 don't generally leave until they've helped you out.

21 Q. Do you know whether or not he was using drugs when  
22 he went to Glen Oaks?

23 A. I have no clue.

24 Q. You got no clue about that?

25 A. No, sir.

1 Q. You don't know whether he may have been using  
2 amphetamines when he went over to Glen Oaks the first time?

3 A. I have no clue.

4 Q. You don't know whether he may have been using  
5 cocaine and marijuana when he went over to Glen Oaks again?

6 A. I have no clue. If I knew that, I'd try to help  
7 him.

8 (State's Exhibit No. 145 marked)

9 MR. DAVIS: Your Honor, at this time we would  
10 offer State's Exhibit 145. These are the business records of  
11 Glen Oaks Hospital. They've been on file with the Court more  
12 than 14 days prior to trial.

13 (State's Exhibit No. 145 offered)

14 MS. LITTLE: No objection.

15 THE COURT: Admitted.

16 (State's Exhibit No. 145 admitted)

17 MR. DAVIS: May I approach the witness,  
18 please.

19 THE COURT: You may.

20 Q. (By Mr. Davis) Mr. Tolar, let me show you the  
21 records from Glen Oaks Hospital. You've never seen these  
22 records, have you?

23 A. If I knew he had that trouble, I would have helped  
24 him myself. He wouldn't have to have been going --

25 Q. Well, sir --

1 A. -- to Glen Oaks.

2 Q. -- my question was: Have you ever seen these  
3 records?

4 A. No, sir.

5 Q. No one from the defense team has ever showed you  
6 these records?

7 A. No, sir.

8 Q. Okay. So when we look through these records, sir,  
9 you don't know -- I take it that when he was admitted to Glen  
10 Oaks the first time, that he denied any drug use. You don't  
11 know that, do you?

12 A. I don't know none of that.

13 Q. Okay. You don't know that he had been taking  
14 amphetamines prior to going into Glen Oaks? You don't know  
15 that, do you?

16 A. No, I don't see where it says it on here, though.

17 Q. Yes, sir, right here. And taking his mother's  
18 prescription pills?

19 A. Where does it say anything about amphetamines at on  
20 here?

21 Q. I'll be happy to show you, sir. Right where he's  
22 screened for amphetamines. Do you see that? Do you see  
23 amphetamines there?

24 A. I see the word amphetamines. I don't see where he's  
25 been tested positive for them.

1 Q. Went over his positive drug screen for  
2 amphetamines. Do you see it now?

3 A. I see it now.

4 Q. Prior to looking at the records, you didn't know  
5 that your brother had tested positive for amphetamines when  
6 he went in there, did you?

7 A. No, sir. If I did, I would have helped him myself.

8 Q. As a matter of fact -- I mean, the truth of the  
9 matter is that if your brother had come to you and said, hey,  
10 I need some help, you would have done everything you could  
11 possibly do to help him, right?

12 A. If I knew it, I would have helped him.

13 Q. All he had to do was tell you the truth, hey, I'm  
14 having a drug problem, I'm having a drinking problem, I'm  
15 having a problem with my anger. And the truth of the matter  
16 is you would have bent over backwards to do anything you  
17 could possibly do to help him, wouldn't you?

18 A. Yes, sir.

19 Q. And again, you don't know because you haven't seen  
20 these records? You don't know whether or not he's tested  
21 positive for cocaine and marijuana when he went back over  
22 there, do you?

23 A. I have no clue. I didn't know none of that.

24 Q. And again, if you had known that back in 1999 when  
25 your brother went to Glen Oaks, you would have taken him for

1 help, you would have sat down and counseled him yourself, you  
2 would have done anything you could possibly do to say you  
3 need to get your life back on the right course, wouldn't you?

4 A. I'd help him, yes, sir.

5 Q. That's really been true throughout your life. I  
6 mean, has there ever been a time where you said to your  
7 brother I'm not going to help you, I don't love you, I don't  
8 care about you?

9 A. No, sir. I've never said that.

10 Q. Is that true back in October of the year 2000, you  
11 were ready and able to help your brother at that time,  
12 weren't you, if he needed any help?

13 A. Yes, sir.

14 MR. DAVIS: No further questions.

15 Redirect Examination

16 By Ms. Little:

17 Q. Donnie, you do know that he did go into a number of  
18 different places seeking help, don't you?

19 A. Yes, ma'am.

20 Q. And when you say you know everything about him, is  
21 what you really mean that you think you know his heart  
22 because y'all came up together?

23 A. Yes, ma'am.

24 Q. And you understand he does have problems?

25 A. Yes, ma'am. I've got problems. Everybody has

1 problems.

2 Q. Basically y'all moved through your early childhood  
3 together in different locations; is that right?

4 A. Yes, ma'am.

5 Q. You went to Buckner's Orphanage; is that right?

6 A. Yes, ma'am.

7 Q. Do you remember what you thought about your mom back  
8 then, as to whether she would come back and get you or not?

9 A. I never knew. I never thought I would ever see my  
10 mom again.

11 Q. Okay. Did you think that if they just let you  
12 leave, you could -- that you could go be with your mamma, or  
13 did you think she wasn't coming back and that you were  
14 abandoned by her at that time?

15 A. I -- at one time I didn't figure I would ever see  
16 her again. She wasn't ever coming back.

17 Q. Okay. Was the Tolar household a fairly strict and  
18 religious one?

19 A. To the public, yes; behind close doors, no.

20 Q. Well, when you were there at home with Celeste and  
21 Terry was working, was there discipline done then?

22 A. Very little. She would wait until he got home a  
23 couple of days later.

24 Q. And then he was the primary disciplinarian?

25 A. Yes, ma'am.



1 Q. Was he also the stronger more run-the-house  
2 personality in that family?

3 A. Yes, ma'am.

4 Q. And when you left and went to the Van Zandt County  
5 Children's Shelter, did you feel that you were put out again?

6 A. Yes, ma'am.

7 Q. And then you were able to find a place where you  
8 stayed and found some stability; is that right?

9 A. Yes, ma'am.

10 Q. Were you aware whether or not Jim went to another  
11 place for a couple of weeks before he went to the Murphy's?

12 A. I really didn't know where Jim went at the time.

13 Q. And when you were living with your mother, Hope, and  
14 your father, Donnie -- now, Donnie is dead, isn't he?

15 A. Yes, ma'am.

16 Q. Do you know how old you were when Donnie died?  
17 Donnie, Sr.?

18 A. He died in '84. I was -- that was about 16 years  
19 ago, so I was probably 8 or 9 years old.

20 Q. That was for alcohol related, was it not?

21 A. Yes, ma'am.

22 Q. Do you recall any fights between your mother and  
23 your father in the home when you were small?

24 A. Yes, ma'am, I do.

25 Q. What kinds of fights?

1 A. Violence. All I remember is just -- just bad stuff.

2 Q. Was there hitting?

3 A. Yes, ma'am, there was.

4 Q. Did you witness any of that?

5 A. I seen it.

6 Q. Okay. Do you recall whether your father had a game  
7 he played with you where y'all pulled his boots off?

8 A. Yes, ma'am.

9 Q. Do you recall that?

10 A. Yes, ma'am, I remember all that.

11 Q. What do you remember about that, Donnie?

12 A. He come in from work, and we'd play with him a  
13 little it.

14 Q. And did he have you pull the boots off?

15 A. Yes, he would have us pull his boots off.

16 Q. And then what would he do if you couldn't get them  
17 off or if you were tugging on them?

18 A. He would help us, I think, or get mad one. I don't  
19 really remember.

20 Q. Was most of the violence that you observed between  
21 your mother and you father in the home?

22 A. Most of it was. My dad used to get real mad at me  
23 when I wouldn't get in the truck with him. You know, when I  
24 was that young of an age, you know, you weren't supposed to  
25 be -- you know, mature enough mentally to think that, hey,

1 you don't need to be riding with this fellow, he's drunk, but  
2 that's about the only time daddy would get real mad at me  
3 when I didn't want to go with him a whole lot.

4 Q. Okay. So you left that home because your parents  
5 gave y'all up?

6 A. Yes, ma'am.

7 Q. Then you went to the orphanage?

8 A. Yes, ma'am.

9 Q. Then you went to the Tolars, and that didn't work  
10 out?

11 A. No, ma'am.

12 Q. And when you were at the Tolars, was the discipline  
13 for their children the same as what it was for you and Jim?

14 A. No, ma'am. That was the main problem why we left.

15 Q. And what was the difference, Donnie?

16 A. We had to go bed different. We couldn't do that  
17 different. We couldn't ride our bikes as far --

18 Q. Wait, hold on. What was different about the way you  
19 went to bed?

20 A. We would have to go to bed earlier, you know, a lot  
21 earlier than the rest of their kids, even though me and Jim  
22 Ed was older than a couple of their kids. That -- you know,  
23 I didn't understand none of that.

24 Q. Okay.

25 A. We got a little bit different kind of whoopings than

1 they did, because I don't never really recall them getting a  
2 whole lot as far as physical, you know, discipline, like me  
3 and my little brother did.

4 Q. Okay. So you felt that that was different, for the  
5 Tolar birth children and you and Jim?

6 A. Yes, ma'am.

7 Q. What kind of whippings would you get? Was it with  
8 hands, belts, what?

9 A. Terry was real rough on me, but I -- he -- he was  
10 rough. You know, for a Christian man, I don't see how you  
11 can try to whoop somebody with a pecan limb and slam things  
12 down and kick things over and sling things across the yard  
13 and, you know, scream and holler at a fellow if you're that  
14 kind of Christian, you know. I wouldn't do it.

15 Q. Okay.

16 A. He was just real mean and he hollered and screamed  
17 and he'd grab you and throw you around. He was real rough on  
18 me. Whether I deserved it or not, I don't think I really  
19 did, because I was a little kid. You know, I wasn't a grown  
20 man.

21 Q. And that's different than the way you observed the  
22 punishments for their own children?

23 A. Yes, ma'am. I -- I don't think they never done  
24 nothing wrong in their eyes, to tell you the truth.

25 Q. Okay. What church did your -- did the Tolars

1 attend?

2 A. I believe it was First Baptist with Grand Saline.

3 Q. And was it in Grand Saline where you lived with  
4 them?

5 A. Yes, ma'am.

6 Q. Were there any other differences that you can recall  
7 between the treatment that you and Jim received and the  
8 treatment that the Tolar children received?

9 A. The bedtime and places we would go and like as far  
10 as spending the night with friends and stuff, me and Jim  
11 didn't get to do a whole lot of that, versus when their kids  
12 did. You know, just stuff like that, that really, if you  
13 think about it now, it wasn't a whole lot, but when you're a  
14 kid, that meant a lot -- or it did to me. I never did  
15 understand a lot of it. They used to leave me at the house.  
16 They would go on vacation. They wouldn't even look for me.  
17 They'd just take off and be gone.

18 Q. Like where, for instance? Can you recall?

19 A. I think they went down to Houston a couple of times,  
20 or Galveston once, and just left me at the house.

21 Q. How old were you then?

22 A. About 9 or 10 years old.

23 Q. And how did you fend for yourself?

24 A. I stayed up the road at a friend of mine's house.

25 Q. Okay. Did they know you were staying with another

1 friend?

2 A. Not really. I don't think they cared where I was  
3 at.

4 Q. Was Jim with you, or did he go with them?

5 A. I believe he went a couple of times with them. I  
6 don't remember a whole lot about that family. All I remember  
7 is I'm glad I left. Because he was mean and real -- Terry  
8 was very, very violent. He would catch nobody not being  
9 around, he would jerk you and slam you around and he'd tell  
10 you something real quick. And he was real mean. Like I  
11 said, he was Christian, you know -- he was two-faced.

12 Q. Uh-huh.

13 A. Somebody is around, he's a little bit different, but  
14 he didn't catch nobody not around, he was -- that's a pretty  
15 rough man.

16 Q. Okay.

17 A. He'd get your attention some how. If he had to pick  
18 you up over his head or shake you or do whatever he wanted  
19 to, he would try to get your attention.

20 Q. Okay. Was his treatment of you and Jim the same or  
21 was one of you treated worse than the other?

22 A. I don't know. I never -- he -- I think me and Jim  
23 was about basically the same, but -- to when it was their  
24 kids, we were treated a lot different than their kids because  
25 we was adopted. And people don't understand that. I do.

1 I've seen it in various cases in my lifetime since then that  
2 we was not -- we was not their biological kids and we was  
3 treated differently.

4 Q. Okay.

5 MS. LITTLE: That's all I have. Thank you.

6 Recross-Examination

7 By Mr. Davis:

8 Q. Mr. Tolar, truth of the matter is, the defendant has  
9 a history, he has a habit of lying and exaggerating his  
10 problems, doesn't he?

11 A. Not that I know of.

12 Q. Not that you know of? What has he told you about  
13 the gunshot wound that he suffered to his left hand?

14 A. I believe the only thing that's been discussed about  
15 his hand was he had to have something trimmed off of his  
16 thumb or tendon or something is the only thing I believe he's  
17 ever spoke to me about.

18 Q. He's never told about the pellet wound that he had  
19 in the middle of his hand back in 1996?

20 A. I don't remember nothing about a pellet. I  
21 remembered he injured his hand is all I remember him telling.

22 Q. So as far as you know, he's never really sat down  
23 and talked with you about the time that he was moving a gun  
24 in the closet and it accidentally discharged and a pellet got  
25 lodged in his palm. You don't know that, do you?

1 A. No, sir.

2 Q. Have you talked with Dr. Krusz about what the  
3 defendant may have told him about that incident?

4 A. No, sir, I haven't.

5 Q. Do you know whether or not he's told other doctors  
6 that it was actually a .22 caliber pistol that fired into his  
7 hand?

8 A. I have no idea. But, sir, I laid in the hospital  
9 about four days over a .22 and I know, I've been around a .22  
10 a time or two, and I don't believe I shot myself when it went  
11 off. And I'm living proof that they will go off. And I'll  
12 show you my foot if you'd like to see it.

13 Q. Don't know whether he's told doctors that he  
14 required reconstructive surgery to his hands?

15 A. All I said, he's told me he's had to have something  
16 worked on his thumb, you know, he didn't go in no details  
17 about it.

18 Q. Don't know whether he's told doctors that that  
19 pellet or .22 caliber bullet shattered his median nerve? You  
20 don't know that either, do you?

21 A. No, I don't know none of that.

22 Q. Do you know whether he's told other doctors  
23 different versions about what happened back there in 1996?

24 A. I have no clue, no, sir.

25 Q. Mr. Tolar, have you ever -- have you ever been shown



1 the records from Timberlawn Psychiatric Hospital in Dallas?

2 A. No, sir, I never had no reason to be shown them.

3 MR. DAVIS: Your Honor, at this time we'll  
4 offer State's Exhibit 146. Again, these are the business  
5 records of Timberlawn Psychiatric Hospital. They've been on  
6 file for more than 14 days prior to trial, also.

7 (State's Exhibit No. 146 offered)

8 MS. LITTLE: No objection.

9 THE COURT: Admitted.

10 (State's Exhibit No. 146 admitted)

11 MR. DAVIS: May I approach.

12 THE COURT: You may.

13 Q. (By Mr. Davis) Mr. Tolar, I'm going to show you the  
14 records for Timberlawn Psychiatric Hospital where your  
15 brother was a patient back in October of 1999. Do you know  
16 whether or not he ever went to Timberlawn?

17 A. I know he was trying to seek some help.

18 Q. Do you know how long he stayed at Timberlawn?

19 A. I have no clue.

20 Q. Do you know that actually he was admitted on October  
21 the 9th and that he discharged himself only three days  
22 later? You don't know that?

23 A. I didn't know none of that.

24 Q. Let me show you a history taken from your brother  
25 concerning a gunshot wound to his hand. You see this

1 notation right here under additional notes?

2 A. I really can't read it very good.

3 Q. Okay.

4 A. It says gunshot wound to his hand.

5 Q. Yeah. Let me just, if I can help you then. It says  
6 a gunshot wound to the lung and hand from attempted robbery  
7 where the patient was victim. Do you see that?

8 A. Somebody was trying to rob him.

9 Q. That's what he's telling the doctors anyway, right?

10 A. I guess that's what happened. I don't know. I  
11 wasn't there.

12 Q. You assume your brother was telling the truth?

13 A. I don't know why he wouldn't.

14 Q. Do you know at the time that he was at Timberlawn  
15 again that he was still on three felony probations? Do you  
16 know that?

17 A. I knew he had -- I knew he was on probation. I  
18 don't know what for.

19 Q. And you don't know whether he's told different  
20 versions to different people about what happened to his hand?

21 A. No, sir.

22 Q. Your brother ever been an IV drug user?

23 A. Not that I know of.

24 Q. Has he ever told you that he was an IV drug user?

25 A. No, sir.

1 Q. Personally do you know why your brother told the  
2 doctors at Timberlawn that he had a history of IV drug use  
3 back in 1994?

4 A. I do not.

5 Q. You didn't know that either, did you?

6 A. No, sir.

7 MR. DAVIS: No further questions.

8 Further Redirect Examination

9 By Ms. Little:

10 Q. Donnie, you know he's sought treatment several  
11 places; is that right?

12 A. Yes, ma'am, I know he's tried to get help  
13 everywhere.

14 Q. And you knew that he had problems which is why he  
15 was doing that?

16 A. Yes, ma'am.

17 Q. How old were you when y'all were separated?

18 A. Probably 10, you know, when we got -- when he got  
19 adopted by the Murphys and -- you know, the State had custody  
20 of me and I went to live with a foster family and they've  
21 been good to me.

22 Q. Okay.

23 A. I've lived there ever since.

24 Q. So you didn't get to see Jim very much when he was  
25 with the Murphys; is that right?

1 A. Not at first. Like I say, they kind of -- you know,  
2 they didn't want me to see him or, you know, I think they  
3 wanted -- I don't know really what they wanted, but I don't  
4 think they really wanted me to be around for some reason.

5 Q. So you didn't get to see much of him as y'all went  
6 through your teenage years?

7 A. No, ma'am.

8 Q. And how much have you actually gotten to see him  
9 through your adulthood?

10 A. Quite a bit. Me and Jim -- you know, good times and  
11 bad times, we got together and discussed things and been  
12 fishing, you know, just cooked out on the grill in the yard.

13 Q. At holidays do you see each other?

14 A. Not every holiday, but I try to see him at least  
15 Thanksgiving or Christmas when he --

16 Q. Okay. And you've been living where all this time?

17 A. I lived right at Sulphur Springs since about '80 --  
18 about '87, I believe.

19 Q. How often do you see him, once a month, once every  
20 three weeks, once every three months? Can you estimate?

21 A. Probably once every three weeks.

22 Q. And you know Chelsea Willis, don't you?

23 A. Yes, ma'am.

24 Q. And you've been together with them?

25 A. I've been around both of them.

1 Q. And essentially though y'all have gone from home to  
2 home through your growing up?

3 A. Yes, ma'am, lived everywhere.

4 Q. And that's caused some problems, hasn't it?

5 A. Yes, ma'am.

6 MS. LITTLE: Thank you. That's all I have.

7 Recross-Examination

8 By Mr. Davis:

9 Q. You say your brother sought help in a lot of  
10 different places. As a matter of fact, you know that your  
11 brother has been unwilling to undergo treatment for his  
12 problems?

13 MS. LITTLE: I'll object to that as  
14 characterizing something that's not before the Court and --

15 THE COURT: Can you answer that question?

16 THE WITNESS: No, sir, I didn't know that.

17 Q. (By Mr. Davis) Do you know that your brother was  
18 ordered to go to anger management classes down there at Wills  
19 Point?

20 A. I didn't -- no, sir, I didn't know that.

21 Q. Do you know whether or not he kept his appointments  
22 down there?

23 A. I don't know.

24 Q. Do you know whether or not he was denied admission  
25 to a medical facility back in 1998 because he refused to

1 undergo drug treatment?

2 A. I didn't -- I didn't know that, no, sir.

3 MR. DAVIS: Your Honor, at this time we'll  
4 offer State's Exhibit 147. These are the business records of  
5 Oak Haven Recovery Center. They've been on file with the  
6 Court more than 14 days.

7 (State's Exhibit No. 147 offered)

8 MS. LITTLE: No objection.

9 THE COURT: Admitted.

10 (State's Exhibit No. 147 admitted)

11 Q. (By Mr. Davis) Mr. Tolar, let me show you the  
12 records from Oak Haven Recovery Center. Do you know whether  
13 or not your brother ever went down to Oak Haven?

14 A. I knew he was trying to get some help somewhere. I  
15 believe it was Oak -- Glen Oaks or Oak Haven, something like  
16 that.

17 Q. Right. Do you see here this is a denial of  
18 admission from those records? Do you see a notation in here  
19 that he is a severe polysubstance dependent person? Do you  
20 see that notation?

21 A. Yes, sir. I don't know what polysubstance is  
22 though.

23 Q. Many substances. Do you know what that means?

24 A. (No response.)

25 Q. Okay.

1           A.    My whole family is, really. I think it runs in the  
2 blood.

3           Q.    You see where it says he's been to Andrew Center for  
4 months and months and insists that all their efforts with  
5 support of psychotherapy and medications are -- these are in  
6 quotes, are useless? Do you see that notation?

7           A.    Yes, sir.

8           Q.    See the next notation where it says, patient insists  
9 that he has, quote, no drug dependency problem, but for some  
10 reason whenever I drink, I go to jail. You see that?

11          A.    Yes, sir.

12          Q.    Next statement is the patient indicates he's never  
13 completely stopped drinking alcohol, insists he can control  
14 his intake himself which is contradicted by his record as  
15 well as from what his mother stated. Do you see that?

16          A.    Yes, sir.

17          Q.    Let me direct your attention here to this  
18 statement. It says: The patient in short has never gone to  
19 a drug treatment center because he does not regard his  
20 drinking of alcohol to be a significant problem. Do you see  
21 that?

22          A.    Uh-huh. Yes, sir.

23          Q.    You see this statement, second paragraph, where it  
24 says his admission is denied because the patient has been  
25 unwilling to obtain treatment at a drug treatment center.

1 Until he does so, there is no possibility of dealing with the  
2 underlying problems which the mother and finally the patient  
3 reluctantly concurred. Do you see that?

4 A. Yes, sir.

5 Q. I believe the next notation he's referred back to  
6 the Andrews Center.

7 Did you know any of the details of that before I  
8 showed you those records?

9 A. No, I just know he was trying to get some help,  
10 because he's had a severe drinking problem all his life. My  
11 daddy did, too.

12 MR. DAVIS: That's all I have, Your Honor.

13 MS. LITTLE: Nothing further.

14 THE COURT: You may step down, sir.

15 Sheriff, let's take a 15-minute recess for the  
16 benefit of the jury and the reporter.

17 THE BAILIFF: All rise.

18 (Jury excused from courtroom.)

19 THE COURT: Counsel, resume at 11 -- or at  
20 10:50.

21 MR. DAVIS: Yes, sir.

22 (Recess taken.)

23 THE BAILIFF: All rise.

24 (Jury returned to courtroom.)

25 THE COURT: Let the record reflect the jury is



1 returning to the courtroom.

2 Ladies and gentlemen of the jury, you may be  
3 seated.

4 Mr. Murphy, counsel, visitors in the gallery, you  
5 may be seated.

6 The defense may call their next witness.

7 MS. LITTLE: We call Matt Murphy.

8 (Witness sworn.)

9 THE COURT: Have a seat to my left, please.  
10 Counsel may continue.

11 MS. LITTLE: Thank you.

12 MATT MURPHY

13 was called as a witness by the Defendant and, after having  
14 been first duly sworn, testified as follows:

15 By Ms. Little:

16 Q. State your name, please.

17 A. Matthew Murphy.

18 Q. Matt, do you know Jim Murphy?

19 A. Yes, he's my brother.

20 Q. Okay. How long has he been your brother?

21 A. He's been my brother since I was in 5th grade.

22 Q. Okay. Is that when he came to live with your  
23 family?

24 A. Right. Right.

25 Q. Do you know how he came to live with your family?

1 A. We adopted him.

2 Q. Do you know where he first came to your mother's  
3 attention?

4 A. Through our school -- or actually not my school,  
5 where she went to school. She was -- saw him on the play  
6 ground and he looked a lot like me so she thought it was me  
7 and she wondered what I was doing at her school, and so she  
8 went up to him and talked to him, found out it wasn't me and  
9 from what I understand it was like, would you like to come to  
10 our house, you know, and visit my son. And after that, it  
11 was pretty known that we were probably going to adopt Jim.

12 Q. Okay. Was your dad glad to do that at first, or did  
13 it take him a little while?

14 A. I think it was all of us. We were just talking  
15 about it. I can remember the first day mom came home and  
16 said anything, and we just talked about it. Of course, I was  
17 like, yeah, I want a brother, you know, especially somebody I  
18 can play with that's my age.

19 Q. Okay. How many people are in your family, Matt?

20 A. Altogether it's not a close related family. There  
21 was just my dad, my mother, and I. My sister is a little bit  
22 older than us.

23 Q. And how many sisters do you have?

24 A. I have two sisters. One on my dad's side, and one  
25 on my mother's side.

1 Q. Okay. Who are they, Matt? What are their names?

2 A. Lisa and Tracy.

3 Q. Okay.

4 A. Tracy is the closest to me.

5 Q. Okay. And where did you grow up?

6 A. Edgewood, Texas.

7 Q. Did your mother meet Jim in Fruitvale?

8 A. Right. Yes, that's correct.

9 Q. And are y'all the same age?

10 A. Yes, we are. Well, 17 days.

11 Q. Okay. 17 days difference?

12 A. Uh-huh.

13 Q. Now, you've lived in East Texas all of your life; is  
14 that right?

15 A. Except for just the couple of years when I was in  
16 the military.

17 Q. Okay. And you're married now; is that correct?

18 A. Not married. But future -- future holds very  
19 promising.

20 Q. Okay. And you like to golf, don't you?

21 A. I do it for a living.

22 Q. Okay. You're also working though in another kind of  
23 job, aren't you?

24 A. I teach golf for a living, so --

25 Q. Okay.

1 A. It's all still under the same similarities.

2 Q. Okay. Now, when Jim came to live with y'all, would  
3 you say he was a quiet, shy kid at first, or was he a real  
4 vocal kid? Or how would you describe him?

5 A. Well, I don't think I would describe him as anything  
6 extravagant. I think he was a kid, just like anything. I  
7 don't think he was quiet or shy or extremely vocal or  
8 anything like that. I think he was just like me. We hit it  
9 off real well since the first day.

10 Q. Okay. And in fact, did your mother dress y'all  
11 alike or have y'all dress alike?

12 A. Everybody thought we were twins. It's a crazy  
13 thing. We were 17 days difference and -- so of course, ages  
14 were nearly perfect. It was so funny, my mom would get us  
15 confused sometimes, and so I can remember several times she  
16 just said Matt Jim because she didn't know which one we were  
17 and so she would just -- she knew if she said both of our  
18 names that we'd -- one of us would answer, so --

19 Q. Uh-huh. So y'all adopted Jim and he became your  
20 brother?

21 A. Right.

22 Q. In the 5th grade?

23 A. Uh-huh.

24 Q. What was -- what were things like when you were in  
25 school?

1 A. As in just --

2 Q. Well, activities you were involved in and that sort  
3 of thing?

4 A. Well, we were both involved with several activities,  
5 golf, we played basketball together when we were in junior  
6 high and football together until Jim got hurt. He had a  
7 shoulder injury. He didn't do that anymore. We were both in  
8 the historical society, did a lot of stuff with that. And  
9 then once high school came around, I got more political to  
10 Jim and started doing more like student councils and he went  
11 more to the agriculture culture side so he started hanging  
12 out with the agriculture, doing the ag shops and stuff like  
13 that.

14 Q. Okay. During that time, what kind of discipline was  
15 in your home?

16 A. Well, it was always a very strict, you know -- obey  
17 the rules, you know, and you're punished if you don't obey  
18 the rules.

19 Q. Okay. And through high school did things appear to  
20 go fairly smoothly as far as you know?

21 A. I -- I know that -- all I know is it's always been  
22 real smooth. And like I said, if a rule was broken, of  
23 course we were punished, either we -- in the younger stages,  
24 you know, we were spanked, but in the older stages we were  
25 grounded, couldn't drive -- couldn't drive the car or

1 something like that.

2 Q. Uh-huh. Okay. And did you do well in school?

3 A. I did okay. I -- was in the top 20 when I  
4 graduated.

5 Q. And how did Jim do?

6 A. He wasn't too far -- too far behind me. I don't  
7 know exactly. Unfortunately, I didn't keep up. I guess I  
8 should have.

9 Q. Okay. And during that time, your mom and dad were  
10 getting along?

11 A. Oh, yeah, up until, I guess, my junior year.

12 Q. Okay.

13 A. And that's when --

14 Q. Had they divorced previously?

15 A. They had divorced when I was very young, 1, 2 years  
16 old. And -- that was -- so that was a -- you know, it was  
17 kind of -- they got back together and then divorced again,  
18 so --

19 Q. And during that time that you were from the 5th  
20 grade through high school or towards the end of high school,  
21 there was continuity in your family?

22 A. Oh, absolutely.

23 Q. And --

24 A. Well, we were the poster -- poster family. I mean,  
25 it's so funny. I was telling somebody the other day. It was

1 like, you know, everybody knew us just as the Murphys. And  
2 the two kids played baseball and dad coached, ran for City  
3 Council, you know. It was a big thing, and we were happy,  
4 definitely.

5 Q. Okay. Were you aware of Jim drinking at some point?

6 A. I think we both did. I don't think there was ever a  
7 separation of us drinking when we were in the high school.  
8 Everybody does it in a small town. There's nothing else to  
9 do pretty much.

10 Q. Okay. Were you ever aware that it became a problem  
11 for him where it didn't for you?

12 A. I don't -- if it became a problem, I didn't see it.  
13 It wasn't when I knew him.

14 Q. Okay. Did y'all continue to run around in those  
15 same groups in school, or did Jim veer off to a different  
16 sort of group?

17 A. Groups were very small, if they were groups at all,  
18 so -- I mean, we're talking there was 69 people who graduated  
19 from my class. There's not -- if there was anybody that hung  
20 out from each other, we all hung out together. And there  
21 might be a couple of friends that were not the same, but most  
22 of us all did the same things.

23 Q. Okay.

24 A. After football games, we all went to the same  
25 pasture.

1 Q. Okay. Same pasture, huh?

2 A. Yeah.

3 Q. Do you know Shod Tarrant?

4 A. Yes, I do.

5 Q. Was he part of your group?

6 A. No. Well, he was when I was earlier, but not -- not  
7 after I got in high school.

8 Q. Okay. Do you know whether Jim continued to be  
9 friends with him?

10 A. Yeah, he became friends, or he was always friends  
11 with him for as long as I'd known, but I never hung out with  
12 him.

13 Q. Okay. When your parents -- your parents did split  
14 up again and get divorced; is that correct?

15 A. That's correct.

16 Q. But just prior to that time, do you recall that  
17 there was a neighbor lady who was elderly that y'all used to  
18 go see?

19 A. Absolutely. Right down the corner from us.

20 Q. Tell the jury about her.

21 A. Well, we used to actually play baseball together and  
22 everything else and my dad was the coach and never really  
23 needed money, but he wanted us to show us the value of money  
24 and so we decided to start mowing this -- mowing lawns for a  
25 living. Of course, our next-door neighbor and another



1 neighbor who was just right down the road -- well, actually  
2 catty-cornered. You can see her house from our house. We  
3 offered to start mowing her lawn, and it was a -- I mean, it  
4 was definitely a learning experience, and we established  
5 great relations with her, because it was an older lady. She  
6 had retired. She was a -- I think she was an organist in the  
7 church at one time so she had an organ. She used to play for  
8 us and everything else and cooked us little Chex mix. That  
9 was our favorite. That was definitely our favorite when  
10 she'd cook us Chex mix. And we'd mow her lawn and  
11 actually -- Jim and I both took really, really big concerns  
12 on her lot. It was like we wanted that to be the yard of the  
13 month. We took care of it. We liked her. We wanted  
14 everything to be perfect in her lawn. And dad was definitely  
15 there to help us out with that too.

16 Q. So you and Jim both cared very much about this lady  
17 and did what you could to help her?

18 A. Absolutely.

19 Q. Even though you were pretty young kids really to  
20 take care of an older person?

21 A. Uh-huh. And when she passed away, I mean, it really  
22 hit us both.

23 Q. Okay. Did you ever become aware that Jim had a  
24 drinking problem, Matt?

25 A. Only through hearsay. I never saw it personally.

1 So if it was something -- it was definitely something that  
2 I've heard --

3 Q. Okay.

4 A. -- never witnessed it personally.

5 Q. When were your parents divorced the last time?

6 A. Well, they separated when we were 17, and then it  
7 took probably a couple of years. I want to say '95 was --  
8 '95 or '96 was when they finally had the full divorce.

9 Q. Okay. And what kind of problems were they having?

10 A. Well, money problems is always the thing that comes  
11 up. The other thing was just when I was playing golf and Jim  
12 and I were playing golf at the country club, the main reason  
13 that mom let go of the membership in the first place was  
14 because my dad would get in trouble by staying out there too  
15 late and going to the 19th hole. And so when she got the  
16 country club membership, she knew that was going to be the  
17 end of the relationship, but she also knew that without that  
18 membership, that I could never do anything, Jim could never  
19 do anything, and we could -- and it was a safe haven for us  
20 to be. I mean, we weren't out, you know, partying with a  
21 bunch of friends, we were playing golf. And, you know, you  
22 can't get in too much playing golf unless you kind of hit a  
23 few too many trees or something like that. But -- so it --  
24 as soon as that happened, she knew that -- that was going to  
25 be the end. And, of course, she predicted it two years

1 later. He stayed out too long, he came home, he was upset,  
2 he got drunk, he yelled at us for just stupid things. I  
3 remember specifically one night where he yelled at me for  
4 spinning out in the drive -- the driveway. It was kind of  
5 easy to do when you have slick tires and it's wet, you know.  
6 And, of course, that started a big battle, and that was the  
7 beginning of the end.

8 Q. Okay. When they did divorce, who was still at  
9 home? Were you still at home?

10 A. We were -- Jim and I and my mother were still at  
11 home. And as a matter of fact, he left us with pretty much  
12 nothing. And I went to Europe on a school vacation. And Jim  
13 and my mom came to pick me up. When we came back, the motor  
14 home was gone and all the bank accounts were completely --  
15 nothing was there.

16 Q. Okay. So at first Jim stayed with your mother and  
17 her name is Samantha Murphy --

18 A. Yes.

19 Q. Is that correct?

20 A. Absolutely.

21 Q. And did you stay with your mother?

22 A. Yes, I did.

23 Q. Were there any hard feelings about the children  
24 going to see their dad?

25 A. We didn't -- she didn't want us to have anything to

1 do with him. I mean, and really I didn't either. I think we  
2 all had a pretty bad attitude towards my dad, just because he  
3 left us with nothing. And when, you know -- some people take  
4 it differently, you know. Might take them years to finally  
5 forgive. Some people take three or four days. So my mom is  
6 still to this day, you know, doesn't want me to have anything  
7 to do with him.

8 Q. Or any of the other kids either; is that right?

9 A. Right.

10 Q. Now, did Jim stay with her very long after the  
11 divorce?

12 A. Actually it was nearly -- he left in early June of  
13 '93, and then after that we -- like I said, we had nothing.  
14 We had no money at all. And so Jim and I kind of stood up  
15 and we started taking -- taking care of business. We both  
16 got jobs as life guards, started teaching swimming lessons,  
17 doing just about anything that you could bring a paycheck  
18 home to. And that was all the way up until I guess about  
19 halfway of our fall semester of our senior year.

20 Q. Okay. And so you did what you could to help your  
21 mother?

22 A. Absolutely.

23 Q. You and Jim both?

24 A. Yes.

25 Q. And what -- did there come a point in time that Jim

1 moved to your dad's?

2 A. Yes, when -- like I said, it was about the middle of  
3 our senior semester, our fall semester, so I'm thinking  
4 October, September. I can't remember exactly, but it was  
5 right there at the beginning middle of the semester.

6 Q. Okay. And how did your mother take that?

7 A. Well, of course she didn't want Jim to go and live  
8 with the dad because he -- my dad was somebody that she  
9 didn't like anymore. And for Jim to go over there, well,  
10 that's kind of like in her eyes crossing enemy lines.

11 Q. Do you know if she's ever spoken to Jim since then?

12 A. I know that there has been some type of connection  
13 of trying to get Jim -- or Jim's trying to get them to talk  
14 to mom. She honestly just doesn't want to talk anymore or  
15 have anything to do with him.

16 Q. Okay. So basically she disappeared from Jim's life  
17 when he went to your dad's?

18 A. Yes.

19 Q. And that's true of all the children as far as you  
20 don't tell her if you're going to see your dad or any of that  
21 stuff?

22 A. Right. If I ever go see my dad, it's definitely --

23 Q. On the QT?

24 A. Yeah, I definitely don't tell mom that I'm going to  
25 go see him.

1 Q. Did you -- did you grow to love Jim as your brother,  
2 Matt?

3 A. I grew to love Jim as my own. He was a part of me.  
4 We were -- he was my right hand. He was my left hand. He  
5 was whatever. We were definitely everything that brothers  
6 could be, except blood.

7 Q. And was a lot of that because he was just a good  
8 kid?

9 A. Yes. Well, that's one thing and then -- I mean, I  
10 can -- I can't even count to you on how many -- on both hands  
11 how many times he stood up for me or how many times I was  
12 down and he built me up or took the rap for me because I did  
13 something stupid, you know.

14 Q. And so you're here today because you want the jury  
15 to know that there's more to him than this case?

16 A. Oh, absolutely. There's definitely more to Jim than  
17 just this case. We're talking another 24 years of a life  
18 that was great. And, you know, one incident is something  
19 that's going to -- it's probably going to affect his life  
20 forever, but it's definitely something that's not his whole  
21 life.

22 Q. What other kinds of things did he do for you?

23 A. Oh, goodness, just everything. I can remember  
24 several times where he just helped -- helped me with -- I  
25 don't care what it was. If it was getting out and hanging

1 out and stuff like that and I was always busy or something, I  
2 remember Jim used to always get me out and go hang out with  
3 friends. Like I say, he was never a secluded or reclusive  
4 person. He was always friendly and we always had a lot of  
5 friends and we always got out and did stuff. Is there any  
6 one occasion where I can remember he helped me? Not at this  
7 desk, but I could probably write a book about it.

8 Q. And as long as your parents were together and things  
9 were going smoothly, things went pretty well for Jim?

10 A. Things were great. I mean, if anything, I think we  
11 were able to do what we wanted to do and provide Jim with a  
12 family.

13 Q. Okay.

14 MS. LITTLE: Thank you. That's all I have.

15 Cross-Examination

16 By Mr. Davis:

17 Q. Matt, while the defendant was over there in your  
18 home, he had a great life, didn't he?

19 A. Yes, sir.

20 Q. Never abused in any way, was he?

21 A. I don't think so, no.

22 Q. I mean, would it be fair to say that he had the same  
23 rights and privileges as you did as Bob and Samantha Murphy's  
24 biological son?

25 A. Absolutely. As a matter of fact, that was one thing

1 we talked about, that my rights were actually going to be  
2 kind of cut in half when he got there, because everything was  
3 going to go that way.

4 Q. He got to participate in golf, basketball, and  
5 football with you?

6 A. Uh-huh.

7 Q. Your father also coached him in baseball, didn't he?

8 A. Yes.

9 Q. Your father also -- you remember your father working  
10 to restore a pickup truck with the defendant?

11 A. Yes, absolutely.

12 Q. Okay. And when that was restored, as a matter of  
13 fact, your father gave that pickup truck to the defendant,  
14 didn't he?

15 A. That's correct.

16 Q. He never wanted for money?

17 A. No, sir.

18 Q. I believe that you said as a matter of fact he had  
19 access to a membership at the country club down there, didn't  
20 he?

21 A. That's correct.

22 Q. As far as his abilities in school, he is a smart  
23 individual, isn't he?

24 A. Absolutely.

25 Q. I believe your testimony was he didn't finish that



1 far behind you in school rankings?

2 A. Like I said, he might have finished before me. I  
3 have no idea. I just didn't keep up that much.

4 Q. And as far as his drinking, you don't really know to  
5 what extent he was drinking during high school, do you?

6 A. In high school, it was very social. We all -- like  
7 I said, there was nothing else to do, so we all drank.

8 Q. Did you ever know him to drink on a daily basis?

9 A. I never knew him to drink on a daily basis, no.

10 Q. Did you ever know him to use marijuana on a daily  
11 basis?

12 A. I never knew him at all.

13 Q. As far as the use of alcohol and drugs in your home  
14 when your parents were together, did they allow the two of  
15 y'all to drink in their home?

16 A. There was nothing in our home, so, no, of course,  
17 not.

18 Q. So there was no alcohol and certainly no drugs ever  
19 present in your home?

20 A. Never.

21 Q. Did y'all -- did you consider that you received a  
22 good moral training?

23 A. I think so. Absolutely.

24 Q. Did y'all attend church?

25 A. We attended church only when there was festive

1 things. We went to camps -- we went to church camps, and we  
2 did stuff like that, but my relationship with church came  
3 after I got out of the family.

4 Q. As far as learning right from wrong, though, I mean,  
5 certainly that's something that was provided to you and to  
6 the defendant in the Murphy home?

7 A. Yes.

8 Q. As I understand, as you got older, the two of y'all  
9 kind of sought out different groups to hang out with, right?

10 A. I think that was really just -- we got older, I  
11 started playing more golf, and so I started hanging out with  
12 all my golf buddies. But those same people were -- were our  
13 his friends, too. Like I said, it wasn't the immediate  
14 thing. I mean, you can't -- you can't really separate  
15 yourself in a town of only a thousand so --

16 Q. Right. But as far as Shod Tarrant goes, you did  
17 separate yourself from Shod Tarrant, didn't you?

18 A. I knew him, but after he graduated, I didn't have  
19 anything to do with him.

20 Q. Were you still in contact with the defendant when he  
21 was convicted of burglary in Van Zandt County?

22 A. Actually we lost relations -- our close relations  
23 after Jim started living with dad. And I do remember finding  
24 out about it, and my mom telling me about what happened. And  
25 then I got a couple of letters from him when he was in jail.

1 But I -- like I said, we didn't hang out on a daily basis or  
2 anything like that. Plus, my life had changed a lot, too, by  
3 then, and I was more involved in church and stuff like that.

4 Q. When the -- when the Defendant got back from boot  
5 camp, do you remember him being in boot camp in Childress,  
6 Texas? Does that sound familiar?

7 A. I remember he was in a boot camp. I don't -- I  
8 don't know where it was or what it involved, but --

9 Q. Do you remember when he came back from boot camp  
10 that your father allowed him to come back and live with him  
11 for a period of time?

12 A. I didn't know that.

13 Q. You didn't know that?

14 A. I had no idea.

15 Q. Do you know why your father finally asked the  
16 defendant not to live with him anymore?

17 A. No. As a matter of fact, I kind of questioned my  
18 dad and, you know, nothing really came out of it. It was  
19 just he didn't live here anymore.

20 Q. Did your father actually purchase or help purchase a  
21 new or a newer pickup truck for the defendant?

22 A. I think there was a -- I mean, I know there was a  
23 used pickup that was bought. I don't know if my dad help buy  
24 it. See all that stuff is hearsay. When I hear that about  
25 what happens, you know, well, dad bought -- well, dad bought

1 Jim a new truck, well, that's comes from my mom who was on  
2 the other enemy line so I had no idea. But, yeah, there was  
3 a new truck or newer truck that Jim was driving. Uh-huh.

4 Q. How much contact have you had with the defendant  
5 since he came back from boot camp, Matt?

6 A. I think I've seen him twice. He's come by to see me  
7 a couple of times, and he's always been very respectable to  
8 my mom. He let's me know that he's coming and then I kind of  
9 look out for him until he comes up and drives around.

10 Q. As far as what he's really been doing with his life  
11 since he came back from boot camp, would it be fair to say  
12 that really you don't have that much information about what  
13 he's really been doing for the last few years?

14 A. Actually I keep up with him a little bit more than  
15 he thinks I do, or I did for awhile, especially when I was in  
16 Terrell, I was a youth minister there for a while and had  
17 good connections in the police department that they do a  
18 little bit more skip tracing than me. And I found out for a  
19 while he was doing pretty well. He had a child. He had a  
20 wife. And then after that I lost relations.

21 Q. Did you -- did you know that he was placed on a  
22 probation up here in Dallas County for a felony, also?

23 A. No, I didn't know anything about -- the only thing I  
24 knew about was the probation for the charges that he was sent  
25 to boot camp for.

1 Q. Did you know anything about the violence that may  
2 have occurred between him and a woman by the name of Chelsea  
3 Willis?

4 A. No, I don't. I don't know anything about it.

5 Q. Do you know anything -- do you know Mandy Kirl?

6 A. I don't.

7 Q. Have you ever discussed an incident over in  
8 Arlington with the defendant concerning a Sherryl Wilhelm?

9 A. No, I haven't. I don't know anything about it.

10 Q. Have you ever discussed an incident that occurred  
11 the same day up in Wichita Falls involving a 65-year-old  
12 woman?

13 A. No.

14 Q. Matt, you've never been in trouble with the law,  
15 have you?

16 A. No, I have not.

17 Q. And where do you teach golf now?

18 A. At Hank Haney, just right off of Park Lane.

19 Q. As a -- as a child, Matt, did you -- did you take  
20 Ritalin?

21 A. Yes, I did.

22 Q. Okay. And as I understand, to your knowledge, the  
23 defendant was not taking drugs while he was in your home, was  
24 he?

25 A. Right.

1 Q. Okay. He was never in special education classes,  
2 was he, to your knowledge?

3 A. No.

4 Q. Was he ever given a golf scholarship to Navarro  
5 College.

6 A. Not that I know of. I didn't hear anything about  
7 that.

8 Q. Did you -- did you have a golf scholarship  
9 yourself?

10 A. I had one for Centenary College.

11 Q. As far as you're concerned, I mean, he's still your  
12 brother, isn't he?

13 A. Absolutely.

14 Q. And as long as you and he lived in that home, he was  
15 treated just like a member of the family, wasn't he?

16 A. That's correct.

17 Q. I appreciate it. Thanks.

18 MR. DAVIS: I'll pass the witness.

19 MS. LITTLE: I have nothing further.

20 THE COURT: Thank you very much. You may step  
21 down, sir.

22 MS. LITTLE: May this witness be excused?

23 MR. DAVIS: No objection.

24 THE COURT: You are excused.

25 THE WITNESS: Thank you.

1 THE COURT: Defense may continue.

2 MS. LITTLE: Call Chelsea Willis.

3 THE COURT: Name again, please.

4 MS. LITTLE: Chelsea Willis.

5 THE COURT: Raise your right hand, please.

6 (Witness sworn.)

7 THE COURT: Thank you. Have a seat to my left  
8 if you please, ma'am.

9 THE COURT: Ms. Little.

10 CHELSEA WILLIS

11 was called as a witness by the Defendant and, after having  
12 been first duly sworn, testified as follows:

13 Direct Examination

14 By Ms. Little:

15 Q. State your name.

16 A. Chelsea Willis.

17 Q. Chelsea, C-h-e-l-s-e-a? Do you need a Kleenex or  
18 anything? Could we have a Kleenex? Do you need a minute?

19 A. (Nods head.)

20 Q. Chelsea, how old are you?

21 A. 24.

22 Q. And where did you grow up?

23 A. Wills Point.

24 Q. Did you live there all of your life?

25 A. Yes, ma'am.

1 Q. Who raised you?

2 A. My grandfather.

3 Q. And is his name Logan Craft?

4 A. Yes, ma'am.

5 Q. When you -- when did you meet Jim Murphy?

6 A. Probably about '94.

7 Q. How old were you then, Chelsea?

8 A. I don't remember. I think 15.

9 Q. Were you still in school then?

10 A. No, I had quit.

11 Q. Did you ever finish?

12 A. No.

13 Q. And where was it that you first met Jim?

14 A. Edgewood.

15 Q. Was it at school or hanging out?

16 A. It was at a friend's house.

17 Q. Do you remember who that friend was?

18 A. Jeanne Evans.

19 Q. Jeanne Evans.

20 A. Uh-huh.

21 Q. Was it a party of some sort, or was it --

22 A. No, we just lived there and they came over.

23 Q. Who was they, Chelsea?

24 A. I imagine it was him and Shod Tarrant.

25 Q. Shod Tarrant?



1 A. (Nods head.)

2 Q. And who introduced y'all?

3 A. I guess -- I can't remember. We just met.

4 Q. And did you start to date right away?

5 A. No.

6 Q. Had you known him before at all?

7 A. No.

8 Q. Did you become friends?

9 A. Yes.

10 Q. Did you know that he was madly in love with you from  
11 the second he saw you?

12 A. No.

13 Q. Did you ever learn that?

14 A. Did I learn that?

15 Q. Uh-huh.

16 A. (Nods head.)

17 Q. Okay. And as friends, did you hang out together, or  
18 how did the relationship develop?

19 A. Friends, we just hung out.

20 Q. And what kinds of things would you do, Chelsea?

21 A. We mainly just stayed around the house, just regular  
22 stuff.

23 Q. Okay.

24 A. Didn't go too many places.

25 Q. Were you working then?

1 A. No. My friend worked, and I kept her kid while she  
2 worked.

3 Q. And that's how you supported yourself?

4 A. Well --

5 Q. And that was your friend Jennie?

6 A. Yeah.

7 Q. How long did you know Jim before your relationship  
8 became a romantic one?

9 A. It was the beginning of '96, so two years.

10 Q. You knew him awhile before it became a romance?

11 A. Uh-huh.

12 Q. And did you ultimately move in together?

13 A. Yes.

14 Q. Do you know how old you were then?

15 A. 19, I think.

16 Q. Okay. And have you lived together on and off ever  
17 since then?

18 A. Yes.

19 Q. And you're how old now did you say?

20 A. 24.

21 Q. During the time that you were living together, what  
22 kind of person was Jim to live with?

23 A. As far as his kids, he was wonderful. He was  
24 wonderful to me when he wasn't drunk. He had a bad alcohol  
25 problem.

1 Q. Did he have that from the time you knew him, or did  
2 you know whether he had it --

3 A. I didn't know it at first because I drank, too,  
4 which just normal to me.

5 Q. Okay. And at some point you became aware that he  
6 didn't have good control of his drinking?

7 A. (Nods head.)

8 THE COURT: You have to answer yes or no.

9 A. Yes.

10 Q. (By Ms. Little) Do you know about when that would  
11 have been, if you can approximate it?

12 A. Two or three months after we started living  
13 together.

14 Q. Okay. And were there arguments about that?

15 A. Yes.

16 Q. Did he stay with you a pretty long time when you  
17 first moved in together?

18 A. Yes. We lived at his mom's house in Kaufman.

19 Q. Okay. And was that Hope Abbott?

20 A. Uh-huh.

21 Q. And was he working?

22 A. No, ma'am. I don't --

23 Q. Did he work during the time that y'all were  
24 together?

25 A. Yes.

1 Q. What kind of work did he do?

2 A. At first I think it was a restaurant where I worked.

3 Q. Uh-huh.

4 A. And then it was mostly welding or -- mostly welding.

5 Q. Mostly welding. Were there times when y'all split  
6 up over the years and didn't live together?

7 A. Yes.

8 Q. And did you have other people that you saw during  
9 those times?

10 A. Not until the very last time we split up.

11 Q. Okay. Do you have a little girl that is Jim's  
12 child?

13 A. Yes.

14 Q. What is her name?

15 A. Alyssa.

16 Q. And when was Alyssa born?

17 A. August 31st, 1977.

18 Q. August 31st or July 31st?

19 A. July 31st.

20 Q. So Alyssa was born July 31st of 1997; is that right?

21 A. Yes, ma'am.

22 Q. And she's how old now?

23 A. She will be 4 in July.

24 Q. Did your grandmother Ruby Delossier come and stay  
25 with you --

1 A. Yes.

2 Q. -- during that time?

3 A. Yes, ma'am.

4 Q. And was Jim there?

5 A. Yes, ma'am.

6 Q. Did you have a fairly easy delivery?

7 A. Yes, ma'am.

8 Q. And so you brought the baby home. Was Jim there  
9 with your grandmother?

10 A. Yes.

11 Q. How -- was Jim helpful to you?

12 A. Very.

13 Q. Tell the jury how Jim was helpful to you.

14 A. He just -- he was -- he done everything for my  
15 child, just like he was a mother. It was no different.

16 Q. He changed diapers and all that that some men won't  
17 do; is that right?

18 A. Yeah.

19 Q. And took care of the feeding and the tending and all  
20 that?

21 THE COURT: You have to answer yes or no.

22 A. Yes.

23 Q. (By Ms. Little) And he helped you every way?

24 THE COURT: You have to answer.

25 A. Yes.

1 Q. (By Ms. Little) But did y'all have a fight a couple  
2 of weeks after --

3 A. Yes.

4 Q. -- Alyssa was born? And what was that fight over,  
5 Chelsea?

6 A. He had came home late from work that morning and he  
7 had been stuck on the side of the road and he couldn't get  
8 ahold of me and I guess he got ahold of his brother Bob and  
9 brought him home and I didn't know if that was true or not,  
10 so I made an argument out of it and it just went on all day  
11 and he left.

12 Q. Okay. And was some of that to do with whether he  
13 had been drinking or not?

14 A. Yes, ma'am.

15 Q. Did you believe he had been?

16 A. That was my thought.

17 Q. Okay. And there were arguments about the drinking  
18 on a fairly regular basis; is that right?

19 A. Yes, ma'am.

20 Q. Were the police called?

21 A. Later that day because he left and when I -- I left  
22 and I came home and he was passed out on the bed. And I woke  
23 him up, and that started a fight.

24 Q. So an argument began when you woke him up?

25 A. Uh-huh.

1 Q. And the police were ultimately called?

2 A. Yeah.

3 Q. When y'all would have these arguments, Chelsea, did  
4 you get hit by Jim occasionally?

5 A. Yes, ma'am.

6 Q. And did you hit Jim occasionally?

7 A. There have been times, yes, ma'am.

8 Q. Okay. Did he wind up getting arrested over this  
9 episode?

10 A. Yes, ma'am.

11 Q. And did you do anything about any hospitalization as  
12 a result of that?

13 A. No.

14 Q. And was that on August the 17th of 1997?

15 A. Yes, ma'am.

16 Q. At that time was Jim working at Aavid?

17 A. Yes, ma'am.

18 Q. And what shift did he work?

19 A. The nightshift.

20 Q. Do you know what those hours were?

21 A. I think 11:00 to 7:00 or 10:00 to 6:00. I don't  
22 remember.

23 Q. But it was at the nighttime?

24 And so he was home during the day; is that right?

25 A. Uh-huh.

1 Q. And did he -- were you working then, or were you at  
2 home then?

3 A. At the end of August I started working and he -- I  
4 worked nights for a little while and he -- I mean, like 2:00  
5 to 10:00 or 2:00 to 9:00, and he watched Alyssa.

6 Q. Okay. And -- so he worked at night, you worked some  
7 during the day after the end of August of '97, and he took  
8 care of Alyssa when you were gone to work in the afternoon  
9 and the evening?

10 A. Uh-huh.

11 Q. Is that right?

12 A. Yes, ma'am.

13 Q. Was your grandmother up there some of that time as  
14 well?

15 A. Yes, ma'am.

16 Q. And as far as you know now, was he going to work  
17 every night and coming home the next morning?

18 A. Yes, ma'am.

19 Q. And taking care of Alyssa?

20 A. Yes, ma'am.

21 Q. Did you later have another child, Chelsea?

22 A. Yes, ma'am.

23 Q. And was that because you and Jim had broken up?

24 A. We had been split up for a long time.

25 Q. And was this because of the drinking?



1 A. He had tried to get help somewhere, and when he came  
2 back from there, he didn't come home for a long time.

3 Q. Okay. Do you know where it was he went that time?

4 A. I think Marshall.

5 Q. Marshall, Texas?

6 A. Uh-huh.

7 Q. Were there other times during your time together  
8 with him that he tried to get help for his problems?

9 A. Yes, ma'am.

10 Q. Do you recall taking him to Terrell at one point?

11 A. Yes, ma'am.

12 Q. Do you know about when that would have been?

13 A. Right after the incident where the police were  
14 called.

15 Q. On August 17th of 1997? And did you go to the  
16 Terrell State Hospital?

17 A. Yes, ma'am.

18 Q. Were you able to get Jim in there, or was he able to  
19 get admitted there?

20 A. No, ma'am.

21 Q. Do you know who you talked to by description or  
22 name?

23 A. It was an Iranian woman. I'm not sure of her name.

24 Q. And were you successful in getting Jim in there?

25 A. Talking to her, she evaluated him and said that he

1 didn't need help.

2 Q. Okay. So he was turned away from the Terrell State  
3 Hospital?

4 A. (Nods head.)

5 THE COURT: Answer, please.

6 A. Yes.

7 Q. (By Ms. Little) What other times did you take him  
8 places or you were aware of him going to places to get help?

9 A. He went to a place in Canton called -- I don't know  
10 what it's called. I can't remember.

11 Q. But he went there. Do you know about when that  
12 would have been?

13 A. Before he went to Marshall.

14 Q. Okay. And anything subsequent to that that you know  
15 about?

16 A. Not that I can remember, no.

17 Q. Do you -- did you have another baby later on?

18 A. Yes, ma'am.

19 Q. Who was that?

20 A. Brittany.

21 Q. And Brittany is how old now?

22 A. A year and two months.

23 Q. A year and two months old?

24 A. Yes, ma'am.

25 Q. And who is the father of Brittany?

1 A. Arthur Tarrant.

2 Q. Arthur Tarrant?

3 A. Uh-huh.

4 Q. Is he related to Shod Tarrant?

5 A. Yes, ma'am.

6 Q. They're brothers; is that right?

7 A. Yes, ma'am.

8 Q. Now, you were not with Jim at this time; is that  
9 correct?

10 A. No, ma'am.

11 Q. Did you get back with Jim later on?

12 A. Yes, ma'am.

13 Q. And what was his response to Brittany?

14 A. He just treated her like she was his.

15 Q. So -- and in fact is her name Brittany Murphy?

16 A. Yes, ma'am.

17 Q. During the course of your number of years with Jim,  
18 Chelsea, did you have to have some surgeries?

19 A. Yes, ma'am.

20 Q. What kind of surgeries did you have to have?

21 A. I had a back surgery and kidney surgery.

22 Q. What years do you think you had those surgeries?

23 A. Back surgery was probably '96, and kidney surgery  
24 was last year.

25 Q. And at that time was Jim with you?

1 A. Yes, ma'am.

2 Q. Did he -- what did he do, if anything, to help you  
3 when you were having these surgery problems?

4 A. When I had my back surgery, he stayed with me. When  
5 I had kidney surgery, he kept both kids at home.

6 Q. Okay. And did he stay at your house and take care  
7 of them?

8 A. Yes.

9 Q. And how long were you under the weather from the  
10 kidney surgery?

11 A. Months.

12 Q. So he was there taking care of your children?

13 A. (Nods head.)

14 Q. And his children?

15 A. (Nods head.)

16 Q. Having known him and lived with him all this time,  
17 Chelsea, what kind of person is he?

18 A. He's sweet. He just has a bad alcohol problem. I  
19 guess was incurable. I don't know.

20 Q. And when you say he's sweet, you mean when he's  
21 not -- he hasn't had too much to drink?

22 A. Yes, ma'am.

23 Q. Now, y'all been together a long time, haven't you,  
24 and you started real young?

25 A. (Nods head.)

1 Q. And you're still young?

2 A. (Nods head.)

3 Q. At least from where I'm sitting you're very young?

4 A. Yes, ma'am.

5 Q. Except for the drinking and the arguments that arose  
6 out of that, did you always feel like you and Jim were kind  
7 of meant for each other?

8 A. Yes, ma'am.

9 Q. But you've had an up and down road, haven't you?

10 A. (Nods head.)

11 THE COURT: Answer, please?

12 A. Yes.

13 Q. (By Ms. Little) Do you know about any other  
14 hospitalizations he's had?

15 A. Yes, ma'am.

16 Q. And what would they have been?

17 A. There was one in Greenville, and I don't know --

18 Q. You don't know the name of it?

19 A. Glen Oaks. There was one in Dallas, which I don't  
20 have a clue what it was because we weren't even talking. And  
21 he went to Glen Oaks twice, I think.

22 Q. And what problems does he have that you know about?

23 A. When he was in Glen Oaks, I didn't know much because  
24 I wasn't with him. And I know that he had several problems,  
25 but -- as far as seeing things or hearing things. And

1 drinking, I don't know all of them, because I wasn't --

2 Q. Did he have DT type problems sometimes?

3 A. Yes, ma'am.

4 Q. Do you know a man named Randy Crow?

5 A. Yes, ma'am.

6 Q. Who is Randy Crow, Chelsea?

7 A. Was his AA sponsor.

8 Q. Do you know when Randy Crow became part of Jim's  
9 life?

10 A. When he got back from Marshall, Texas.

11 Q. So he had been to some sort of treatment center and  
12 then he went -- started going to AA meetings; is that right?

13 A. Yes, ma'am.

14 Q. And do you know Randy personally?

15 A. Yes, ma'am.

16 Q. Did you feel like he was helping Jim for a while?

17 A. Yes, ma'am.

18 Q. In fact, did y'all go to his house?

19 A. Yes.

20 Q. And take the baby and play games and things like  
21 that?

22 A. (Nods head.)

23 Q. So there was a period of time that Jim was able to  
24 work on the AA steps; is that right?

25 A. (Nods head.)

1 Q. Do you know if he ultimately lost contact with Randy  
2 Crow?

3 A. (Nods head.)

4 Q. Do you know that?

5 A. No. Sorry.

6 Q. You need to speak. Okay?

7 During the time that you were with Jim, did you keep  
8 a diary?

9 A. Yes, ma'am.

10 Q. And in that diary -- was it kind of like a day  
11 finder where there was a little square you could write -- it  
12 wasn't a long page or anything, was it?

13 A. No, ma'am.

14 Q. Have you always kept that?

15 A. Yeah.

16 Q. And did you write down stuff?

17 A. Yes, ma'am.

18 Q. Did you make entries everyday or just some days?

19 A. Everyday.

20 Q. And did you make entries when you and Jim argued?

21 A. Yes, ma'am.

22 Q. And did you make entries when things were good?

23 A. Yes, ma'am.

24 Q. Did you bring that book with you today?

25 A. Yes, ma'am.

1 MR. DAVIS: I'm going to object to it as being  
2 hearsay. And secondly, I have not been provided with any of  
3 those copies prior to this time. First of all, I'll be  
4 objecting to it as being hearsay. Anything that she's  
5 written down previous to coming to court.

6 THE COURT: Nothing upon which to rule on,  
7 Counsel, you may continue.

8 Q. (By Ms. Little) You did bring that book today and  
9 that would be available at the lunch hour; is that right?

10 A. Yes, ma'am.

11 Q. Were you pretty angry with Jim about all of this?

12 A. Yes, ma'am.

13 Q. And that's caused more problems, too, hasn't it?  
14 It's caused -- you're hurt by it, and it's been horrible,  
15 hasn't it?

16 A. Yes, ma'am.

17 Q. Do you feel from your knowledge of Jim Murphy,  
18 Jedidiah Isaac Murphy, that he is a person who has a  
19 conscience or has no conscience?

20 A. He does.

21 Q. And how do you know that, Chelsea?

22 A. Because our arguments he would always feel bad the  
23 next day for -- or even when it was over.

24 Q. Even when it was over?

25 A. (Nods head.)



1 Q. And how would that manifest itself? How would he --  
2 how would he show that he felt badly about things?

3 A. He would always apologize and things would be fine  
4 for a while after that.

5 Q. Did you see him feel remorse for things that  
6 happened?

7 A. Yes, ma'am.

8 Q. Did he ever cry about it?

9 A. Yes, ma'am.

10 Q. Did he make himself vulnerable to you with his  
11 problems?

12 A. Yes, ma'am.

13 Q. And has that been true of him for as long as you've  
14 known him?

15 A. Yes, ma'am.

16 Q. To the best of your recollection today, was Jim at  
17 home with you through the month of August of 1997?

18 A. Yes, ma'am.

19 Q. Working at Aavid at night and being with you and the  
20 new baby during the day?

21 A. Yes, ma'am.

22 Q. After you went to Terrell that month of August of  
23 1997, was he then back at home with you?

24 A. When?

25 Q. In August of '97?

1 A. Yes, ma'am.

2 Q. Would you ever believe in a million years he would  
3 have done what he's been found guilty of?

4 A. No, ma'am.

5 MS. LITTLE: Your Honor, could we approach the  
6 bench for just a moment.

7 THE COURT: You may.

8 MS. LITTLE: Okay. May I proceed, Your Honor.

9 THE COURT: You may.

10 Q. (By Ms. Little) Do you have the diary with you,  
11 Chelsea, right now?

12 A. It's outside.

13 Q. Where is it?

14 A. In my purse. It's in that little room.

15 MS. BALIDO: May I approach.

16 (Counsel brings book forward)

17 THE COURT: You may.

18 Q. (By Ms. Little) Chelsea, would you get out the  
19 diary? It looks like it's been with you awhile. And you  
20 brought this today at my request; is that correct?

21 A. Yes, ma'am.

22 Q. And we Xeroxed some pages from it that have been  
23 marked as Defendant's Exhibits 59, 60, and 61. Would you  
24 look at those dates and be sure that they're what you brought  
25 to us that reflect that period of time?

1 A. Yes, ma'am.

2 Q. They are the same? And these diary entries were  
3 made by you at the time the events that you recorded them  
4 occurred; is that correct?

5 A. Yes, ma'am.

6 Q. And they are all in your handwriting?

7 A. Yes, ma'am.

8 MS. LITTLE: We'll offer Defense Exhibits 59,  
9 60, and 61.

10 (Defendant's Exhibit No. 59 through 61 offered)

11 MR. DAVIS: I'll object at this time to those  
12 being hearsay, Your Honor. And also, would point out that in  
13 my motion filed December the 19th of 2000, which the Court  
14 has ruled upon, that I asked for any writings that the  
15 defense intended to offer during the course of this trial. I  
16 have never been provided with this particular writing.

17 THE COURT: Defense have any response to  
18 that?

19 MS. LITTLE: I've never seen this before  
20 today, Your Honor.

21 THE COURT: Well, is this not a form of Kyles  
22 v. Whitley in reverse?

23 MS. LITTLE: Well, I've offered to start --  
24 have the lunch be early so they can look at this. I've just  
25 received it. They declined to do that.

1 THE COURT: Are there any other documents  
2 about which the defense anticipates offering consistent with  
3 request made by the State?

4 MS. LITTLE: No, sir.

5 THE COURT: The Court finds under Rule 801(e)  
6 the statements are not hearsay. We will take a recess  
7 however, and they will be admitted. I will give the State  
8 not only the lunch recess but if additional time to examine  
9 the contents. So we will take a lunch recess at this time.

10 Sheriff, if you would retire the jury.

11 The document is admitted.

12 (Defendant's Exhibit No. 59 through 61 admitted)

13 THE COURT: Ms. Willis, you are excused for  
14 lunch, too. See you back at 1 o'clock, assuming the jury has  
15 finished their lunch at that time.

16 Mr. Murphy, I remand you to the custody of the  
17 Sheriff.

18 Visitors, including the media, you may be seated or  
19 excused if you wish.

20 (Jury excused from courtroom)

21 MR. DAVIS: Judge, just for record if I may  
22 indicate that Ms. Willis at my request has now given me what  
23 purports to be her day planner that Defendant's Exhibits 59,  
24 60, and 61 have come from, so I will take that over the lunch  
25 break.

1 (Lunch Recess Taken)

2 THE COURT: Both sides ready for the jury to  
3 return?

4 MR. DAVIS: The State's ready, Your Honor.

5 THE BAILIFF: All rise.

6 (Jury returned to courtroom)

7 THE COURT: Let the record reflect the jury is  
8 returning to the courtroom at this time.

9 Jurors may be seated.

10 Mr. Murphy, counsel, visitors in the gallery, you  
11 may be seated.

12 Counsel may proceed.

13 Q. (By Ms. Little) Chelsea, you're the same person who  
14 was sworn in earlier and that was testifying before lunch; is  
15 that correct?

16 A. Yes, ma'am.

17 MS. LITTLE: May I approach the witness, Your  
18 Honor.

19 THE COURT: You may.

20 Q. (By Ms. Little) Chelsea, let me get you to look at  
21 Defendant's Exhibits 59, 60, and 61. Are these pages from a  
22 diary that you were keeping?

23 A. Yes.

24 Q. In 1997?

25 A. Yes, ma'am.

1 Q. And I think that the jury has probably seen this.  
2 Mr. Davis has your original right now. You understand you'll  
3 get that back?

4 A. Yes, ma'am.

5 Q. Is this a little entry that you made like on a day  
6 finder or something each day?

7 A. Yes, ma'am.

8 Q. And you wrote everyday, did you not?

9 A. Yes, ma'am.

10 Q. Had you kept a diary previous to this year of 1997?

11 A. Yes, ma'am.

12 Q. And did you keep a diary subsequent to this year?

13 A. Uh-huh.

14 Q. Did you -- are you keeping one now, or have you quit  
15 doing it?

16 A. I quit.

17 Q. If you'll look at Defense Exhibit Number 60 which is  
18 the month of August 1997, did you make an entry for each day  
19 of that month?

20 A. Yes, ma'am.

21 Q. Let me refer you specifically to the 22nd of  
22 August. What did you do that day?

23 A. Washed clothes and ate at my dad's and watched kids.

24 Q. And who would be included in that?

25 A. Me, Jim, my daughter, and Jessica.

1 Q. And your dad?

2 A. And my dad.

3 Q. And did you go to his house to do all this?

4 A. Yes, ma'am.

5 Q. And y'all cooked and cleaned up; is that correct?

6 A. Yes, ma'am.

7 Q. On the 17th you've marked that out. Is that the day  
8 that you had the big fight and the police came?

9 A. Yes, ma'am.

10 Q. But you had written there; is that right?

11 A. Yes, ma'am.

12 Q. You also show on this page and on many other pages  
13 that you -- if nothing happens that day, you write "stayed at  
14 home." Sometimes you add "that's all really"; is that  
15 correct?

16 A. Yes, ma'am.

17 Q. And you wrote that on the 7th, 8th, and 9th of  
18 August; is that correct?

19 A. Yes, ma'am.

20 Q. Now, this is just a week after your baby is born,  
21 Alyssa; is that right?

22 A. Yes, ma'am.

23 Q. And on the 25th, 6th and 7th you also wrote "stayed  
24 home"?

25 A. Yes, ma'am.

1 Q. Now, at that time was Jim working at night at Aavid?

2 A. Yes, ma'am.

3 Q. And you were at home?

4 A. Yes, ma'am.

5 Q. The night that you went to --

6 MS. LITTLE: May I approach again, Your Honor.

7 THE COURT: You may.

8 Q. (By Ms. Little) The night that you went to your  
9 dad's, did y'all take a picture?

10 A. Yes, ma'am.

11 Q. On August 22nd of 1997?

12 A. Yes, ma'am.

13 Q. Let me show you Defense Exhibit Number 62 and ask  
14 you if that is a photograph that was taken that night?

15 A. Yes, ma'am.

16 Q. August 22nd?

17 MS. LITTLE: We'll offer Defendant's Exhibit  
18 Number 62.

19 (Defendant's Exhibit No. 62 offered)

20 MR. DAVIS: No objections.

21 THE COURT: Admitted.

22 (Defendant's Exhibit No. 62 admitted)

23 MS. LITTLE: May I publish, Your Honor.

24 THE COURT: You may.

25 Q. (By Ms. Little) Chelsea, is this a photograph that



1 was taken of you and Jim in the kitchen of your father's  
2 home?

3 A. Yes, ma'am.

4 Q. And that's you with a different color hair; is that  
5 right?

6 A. Yes, ma'am.

7 Q. Okay. At that time Jim was working at night; is  
8 that right? And he was home in the daytime?

9 A. Yes.

10 Q. Now, you also made entries throughout this diary  
11 when y'all had fights and all kinds of things like that,  
12 didn't you?

13 A. Yes, ma'am.

14 Q. And those are reflected during that month. In that  
15 week there were no fights; is that correct?

16 A. Right.

17 Q. The week of the 17 -- from the 17th on through the  
18 end of the month?

19 A. From the 18th on?

20 Q. Yes.

21 A. Yes, ma'am.

22 Q. Did Jim go to get some kind of help or try to get  
23 some kind of help after that arrest on the 17th?

24 A. Yes, ma'am.

25 Q. Where did he go then?

1 A. Terrell State.

2 Q. And you've already testified about that episode.

3 Have there been times or has there ever been a time in your  
4 life while Jim was in your life that Jim made any kind of  
5 suicide attempt, Chelsea?

6 A. Yes, ma'am.

7 Q. About when would that have been?

8 A. I'm not sure of the exact date or --

9 Q. Do you know the year even?

10 A. (No response.)

11 Q. Let me ask you this --

12 A. '99, maybe.

13 Q. Maybe '99?

14 A. '98 or '99.

15 Q. And when that happened, did he go to the hospital  
16 after that?

17 A. Yes, ma'am.

18 Q. Did his mother Hope take him?

19 A. Yes, ma'am.

20 Q. How did he try to kill himself at that time?

21 A. Sleeping pills.

22 Q. Okay.

23 A. Over the counter.

24 Q. Did he take Unisom, a lot of Unisoms?

25 A. Yes.

1 Q. So would it be fair to say, Chelsea, that Jim has  
2 always been a very troubled person?

3 A. Yes, ma'am.

4 Q. And you're not in any way trying to excuse him for  
5 anything, are you?

6 A. No, ma'am.

7 Q. Were there any other times that you know of that he  
8 made any attempts on his own life?

9 A. There was one where he had said he was going to kill  
10 his self with a gun in Kaufman, but I don't know how that  
11 whole story went.

12 Q. Okay. So essentially this diary which goes on  
13 all -- forever doesn't indicate any fights on the 26th or  
14 27th of August; is that right?

15 A. Yes, ma'am.

16 Q. And these are entries that you made at the time of  
17 that date?

18 A. Yes, ma'am.

19 Q. Were you able to remember if you were working at all  
20 in the evenings then or in the daytime?

21 A. Well, I know I started four weeks after my daughter  
22 was born, I believe, and from my calendar it says the end of  
23 August, the 28th.

24 Q. So during the month of August of '97 you were at  
25 home?

1 A. Uh-huh.

2 Q. Did you have a car or a truck?

3 A. A car.

4 Q. And did Jim drive that car?

5 A. Yes, ma'am.

6 Q. Where did he drive it?

7 A. To work and home.

8 Q. And that was at night, right?

9 A. Yes, ma'am.

10 Q. But it was your vehicle, and there would be a fight  
11 if he took it or went off with your car, wouldn't it?

12 A. If it wouldn't have come home the next morning, yes,  
13 ma'am.

14 Q. Yes.

15 MS. LITTLE: That's all I have, Chelsea.

16 Thank you.

17 Cross-Examination

18 By Mr. Davis:

19 Q. Ms. Willis, we've met once before, haven't we?

20 A. Yes, ma'am -- yes, sir.

21 Q. Do you remember when I came out to your workplace in  
22 Terrell?

23 A. Yes, sir.

24 Q. And I talked to you about possibly testifying in  
25 this case?

1 A. Yes, sir.

2 Q. You remember at the time you told me that you did  
3 not want to testify, correct?

4 A. Yes, sir.

5 Q. Chelsea, let me just -- let me talk to you about  
6 what you were just talking with -- with the attorney with  
7 about the suicide attempts. The truth of the matter is that  
8 this man, Jedidiah Murphy, to your knowledge, has never made  
9 a serious attempt at suicide, has he?

10 A. Well, yes, sir, he did.

11 Q. Oh, he did?

12 A. Uh-huh. If he would not have called me when he took  
13 those pills, he would have been dead.

14 Q. Do you remember talking with a Dr. Mary Connell --

15 A. Yes.

16 Q. -- a defense expert on April the 3rd?

17 A. Uh-huh. I don't remember the exact date, but I  
18 remember talking to her.

19 Q. Have you had an opportunity to review what you told  
20 Dr. Connell?

21 A. No, ma'am -- no, sir.

22 Q. So you don't recall telling Dr. Connell back on  
23 April 3rd of this year that sometimes he would tell -- tell  
24 them good-bye, you and other people, apparently planning to  
25 kill himself, but he never made a serious attempt. You

1 remember telling Dr. Connell that back on April 3rd?

2 A. No, sir.

3 Q. When you talked about your fights with the  
4 defendant, do you know how many times that the two of y'all  
5 fought?

6 A. No, sir.

7 Q. You made notations in your diary about that, didn't  
8 you?

9 A. Yes, sir.

10 MR. DAVIS: May I approach, Your Honor.

11 THE COURT: You may.

12 Q. (By Mr. Davis) Ms. Willis, I'm going to hand you  
13 back your -- your diary. Show you now State's Exhibit 149,  
14 and ask you to look through that and tell me whether or not  
15 that appears to be a true and correct copy of your entire  
16 diary.

17 A. Can I look through it?

18 Q. If you don't mind, just to make sure none of the  
19 months are missing.

20 (Witness examines diary.)

21 Q. (By Mr. Davis) Does that appear to be complete?

22 A. Yes, sir.

23 MR. DAVIS: Your Honor, at this time the State  
24 will offer State's Exhibit 149.

25 (State's Exhibit No. 149 offered)

1 MS. LITTLE: No objection.

2 THE COURT: Admitted.

3 (State's Exhibit No. 149 admitted)

4 Q. (By Mr. Davis) Leaving you with your original now.

5 Do you know how many notations that you made in your  
6 diary concerning fights?

7 A. No, sir.

8 Q. Would it surprise you to find that you have notation  
9 for April 2nd of 1996 about a fight?

10 A. No, it wouldn't surprise me. It doesn't mean that  
11 they were physical fights.

12 Q. Okay. April 8th of '96?

13 A. No, sir.

14 Q. Would it surprise you to find out that you made 21  
15 separate notations of fights with this man down here?

16 A. Through two years, no, sir.

17 Q. And you told Ms. Little just a moment ago that --  
18 that you had hit the defendant in the past during some of  
19 these fights. Do you remember telling Ms. Little that?

20 A. Yes.

21 Q. Telling this jury that?

22 A. Yes, sir.

23 Q. Again, I'm going to direct you back to a  
24 conversation that you had with Dr. Mary Connell, an expert  
25 hired by the defense in this case, and you remember Dr.

1 Connell asking you about that very same subject, about the  
2 fights that you had with the defendant?

3 A. Yes, sir.

4 Q. Do you remember Dr. Connell asking you whether you  
5 had ever hit the defendant?

6 A. Yes, sir.

7 Q. Do you remember telling Dr. Connell back on April  
8 the 3rd that you never hit him?

9 A. I believe so. I've pushed him. I've never  
10 physically hit him with my fist, so that is the reason why I  
11 said that.

12 Q. So the truth of the matter is that you have never  
13 hit this man with your fist, have you?

14 A. With my fist, no.

15 Q. So when you told Dr. Connell that you never hit him,  
16 that was the truth, wasn't it?

17 A. Meant by hitting him with my fist, yes.

18 Q. This -- this fight that you had on August the 16th  
19 or the 17th, I'm sorry, that Sunday, when did the defendant  
20 pull out the knife and hold that on you?

21 A. He didn't hold a knife on me.

22 Q. He didn't?

23 A. No, sir.

24 Q. He was holding a knife when the police officer  
25 arrived, wasn't he?



1 A. Yes, sir, he wasn't directing the knife towards me  
2 nor the police officers.

3 Q. Where did he get that knife from?

4 A. Off the counter in the kitchen.

5 Q. You and the defendant were the only people in that  
6 apartment, weren't you?

7 A. Yes, sir. The reason for picking the knife up, I  
8 don't have a clue.

9 Q. You don't know why he picked it up, do you?

10 A. No.

11 Q. You don't know what he was going to do with it,  
12 either, do you?

13 A. He didn't seem to be going to do anything with the  
14 knife.

15 Q. He's a pretty unpredictable individual, isn't he?

16 A. When he's drunk.

17 Q. He was drunk then, wasn't he?

18 A. Yes, sir.

19 Q. You feel like you provoked him into hitting you that  
20 day?

21 A. I woke him up and was griping at him, yes, sir.

22 Q. How did Jeanne Evans provoke him into having him hit  
23 her left eye?

24 A. She just stepped in between me and him.

25 Q. She was actually coming to your rescue, wasn't she?

1 A. She was taking up for me, yes.

2 Q. That's when Jedidiah Murphy down here struck her in  
3 the left eye?

4 A. Yes, but I don't believe it was intentional.

5 Q. Was that an accident?

6 A. I'm not sure. I believe so.

7 Q. Was that when he broke your nose?

8 A. Yes, sir.

9 Q. Now, as a result of that, he was arrested by Wills  
10 Point, wasn't he?

11 A. Yes, sir.

12 Q. And then a few days later you went down to the  
13 police station or to the D.A.'s office and you asked them to  
14 drop the charges, right?

15 A. Yes. I never filed any. They said the State would  
16 pick them up, and they did.

17 Q. And then you went down and requested that nothing be  
18 done to him, that he be released, and he was, wasn't he?

19 A. We posted bond, yes, sir.

20 Q. He was never charged with the offense then, was he?

21 A. I don't remember. We went to court, and as far as I  
22 can remember, he was supposed to take a family violence  
23 course in Edgewood.

24 Q. He never did that, did he?

25 A. Yes, he did go a few times. I cannot remember how

1 many.

2 Q. Where was that exactly?

3 A. Edgewood, Texas.

4 Q. What was the name of the facility that he was  
5 supposed to go to?

6 A. I don't have a clue.

7 Q. Did you go with him?

8 A. Yes.

9 Q. Was that to the Van Zandt County Community  
10 Counseling? Does that sound familiar to you?

11 A. If that's in Edgewood, yes.

12 Q. How many times did the two of y'all go together?

13 A. I don't recall. It was not very many.

14 Q. As a matter of fact, have you looked at the records  
15 from Van Zandt County Community Counseling lately?

16 A. No.

17 Q. Do you know how many appointments that this man  
18 failed to keep down there at that facility?

19 A. I do not remember how many he failed to keep. I  
20 know that we did not go very many times, or that he did not  
21 go very many times.

22 Q. As a matter of fact he just simply decided to stop  
23 going there, didn't he?

24 A. No, sir, it wasn't exactly like that. He had to  
25 work. I had to work.

1 Q. He just couldn't work it into his busy schedule to  
2 go down there for the anger management classes?

3 A. I don't believe that, sir.

4 Q. That's why he went down there, to try to get ahold  
5 of his anger problem, wasn't it?

6 A. Our family problem, yes, sir.

7 Q. And he didn't keep the appointment for whatever  
8 reason even though they were there to help him with that  
9 particular problem, right?

10 A. Yes, sir.

11 Q. Since you've known this man, he's had an alcohol  
12 problem, hasn't he?

13 A. Yes, sir.

14 Q. He's had a drug problem, too, hasn't he?

15 A. He was doing a lot of drugs before I met him. When  
16 we got together, the only thing I really know of him doing  
17 was smoking weed. And there was times when he was taking  
18 pills towards the end of this, that he did not do before.

19 Q. When did he go into Glen Oaks? You were with him  
20 then, weren't you?

21 A. No, sir.

22 Q. You weren't with him? When did you meet him,  
23 in '90 --

24 A. We didn't live together when he went to Glen Oaks.

25 Q. So he may have been doing dope during that period of

1 time and you simply don't know it, right?

2 A. Yes, sir.

3 Q. He could have been doing things, for instance, like  
4 amphetamines and you wouldn't know it?

5 A. Yes, sir.

6 Q. Marijuana?

7 A. Yes, sir.

8 Q. Cocaine?

9 A. I don't -- I don't know what he did.

10 Q. Back in 1996 the two of y'all moved to New Boston,  
11 didn't you?

12 A. Yes, sir.

13 Q. Do you remember when his left hand got shot?

14 A. Yes, sir.

15 Q. How did that happen?

16 A. He was going to see if the bullet would roll back  
17 down instead of going through his hand. I don't know the  
18 whole ordeal. It was a Benjamin and a pellet coming out of  
19 there is not going to roll back down like a BB gun, so I  
20 don't know.

21 Q. Okay. It wasn't a .22 caliber pistol, was it?

22 A. A Benjamin Franklin -- I don't know what they're  
23 called. They're some kind of guns, pellet guns.

24 Q. As a matter of fact, in your diary -- I mean, you  
25 have a notation for the day that happened, September the 12th

1 of 1996. Do you remember that?

2 A. I don't remember what I said, no.

3 Q. As I'm reading, went to Texarkana, came home, Jim  
4 shot his hand, sorry babe, I love you?

5 A. Uh-huh.

6 Q. Was there a robbery attempt on your husband on that  
7 day?

8 A. No, sir, not that I'm aware of.

9 Q. So if he told someone else that he got shot in the  
10 hand as a result of being robbed and he was a victim of a  
11 robbery, that's simply not the case, is it?

12 A. No, sir.

13 Q. Do you know whether your husband has ever said that  
14 to anybody?

15 A. No, sir.

16 Q. It sure wouldn't be the truth, would it?

17 A. No, sir.

18 Q. Randy Crow, his AA sponsor -- Randy Crow was a very  
19 good friend to him, wasn't he?

20 A. Yes, sir.

21 Q. Randy Crow was there for him when he needed him --

22 A. Yes, sir.

23 Q. -- correct?

24 Randy Crow tried to help him in every way possible,  
25 didn't he?

1 A. Yes, sir.

2 Q. Tried to help him get a handle on his drinking  
3 problems and other personal problems?

4 A. Yes.

5 Q. And y'all went over there and visited at Randy  
6 Crow's home, didn't you?

7 A. Yes, sir.

8 Q. And during the time that you've known the  
9 defendant -- I mean, there have been times, I guess, when  
10 you've met his mother?

11 A. Yes.

12 Q. His brother Donnie?

13 A. Yes.

14 Q. To your knowledge those people have been available  
15 for him, haven't they?

16 A. In the past years, yes -- few years.

17 Q. What has the defendant told you about shooting  
18 Bertie Cunningham?

19 A. Nothing.

20 Q. Nothing?

21 A. I have not spoke to Jim.

22 Q. You haven't spoken to him since he got in jail?

23 A. He called my house one night collect, and that's the  
24 only time I've ever talked to him.

25 Q. Y'all never even mentioned why he was in jail or the

1 circumstances of whether he guilty of this crime?

2 A. Talking to Jim, personally, no. I have not spoke to  
3 Jim.

4 Q. Did you talk to him when he called you collect?

5 A. For about a minute.

6 Q. What, did you hang up on him or what?

7 A. Yes.

8 Q. So this sweet person down here -- I mean, you  
9 don't -- you don't know whether he's admitted guilt in  
10 killing Bertie Cunningham or not, do you?

11 A. At the time, yes, I knew it because his sister had  
12 told me.

13 Q. But he's never come to you, the mother of his child,  
14 and said, listen, you know, I need to tell you the truth, I  
15 killed that woman out in Garland. He's never said that to  
16 you, has he?

17 A. No, sir.

18 Q. Ever written to you?

19 A. He's written plenty of letters. They're mostly for  
20 his daughter.

21 Q. And in those letters he's never discussed what he  
22 did with Bertie Cunningham?

23 A. He's said he's sorry for what he has done to our  
24 family and her family, but that's --

25 Q. Never -- never taken responsibility for killing an



1 80-year-old woman?

2 A. Well, yes, he took responsibility for it or he  
3 wouldn't have apologized in the letter.

4 Q. This sweet person, has he ever mentioned Mandy Kirl  
5 to you, what he did to Mandy Kirl?

6 A. No.

7 Q. Would you consider him to be a sweet person if you  
8 learned that he took a handgun out, placed it to Mandy Kirl's  
9 head and said are you afraid of dying?

10 A. I wouldn't believe it.

11 Q. You wouldn't?

12 A. No.

13 Q. How about if you learned that he went over to  
14 Arlington, Texas, kidnapped a woman in broad daylight,  
15 started driving her off from her workplace, still a sweet  
16 person?

17 A. I do not believe that.

18 Q. If he went up to Wichita Falls and robbed  
19 a 65-year-old woman that same day, sweet person or not?

20 A. I don't believe that he'd do that, or that he did  
21 that.

22 Q. You still love him, don't you?

23 A. Yes, sir.

24 Q. You don't want him to get the death penalty, do you?

25 A. No, for my daughter's sake.

1 Q. This diary that you kept up, when did you quit  
2 keeping a diary?

3 A. Probably a year and a half, two years.

4 Q. So actually there are diaries that post-date what  
5 you've given us?

6 A. I imagine so, sir.

7 Q. You just didn't bring those to court with you?

8 A. No. I have some before that, too.

9 Q. Did you bring those to court?

10 A. No, sir.

11 Q. Who asked you to bring this particular diary to  
12 court?

13 A. Ms. Little.

14 Q. She told you about the allegations over in Arlington  
15 in August of 1997, didn't she?

16 A. I knew about them, yes.

17 Q. When did you learn about those?

18 A. When it all came up before court ever started, I  
19 believe, or when it started.

20 Q. This year?

21 A. Yes.

22 Q. Within the last couple of months?

23 A. Yes.

24 Q. You know looking through this -- this diary, you can  
25 certainly look at yours if you care to, you know, you've

1     blacked out -- you've blacked out August the 17th of 1997  
2     where he broke your nose, didn't you?

3           A.     Yes, sir, I done that in '97.

4           Q.     You didn't do that later on?

5           A.     No.

6           Q.     You know, as we look through this document -- again,  
7     you can go through it if you want to, but that is the only  
8     day that's blacked out in this entire diary, isn't it?

9           A.     There's stuff marked all over, just this one page  
10    down here had to have said something that I marked out.  
11    There's stuff all over this diary.

12          Q.     But you know when you look at the days, the  
13    individual days and what happened on those days, Ms. Willis,  
14    take your time if you want to, no other day has been blacked  
15    out so that we can't read it now.

16          A.     It has nothing to do with you reading it, sir.  
17    There's stuff all over here that's blacked out. I've got  
18    stuff here scribbled out all different months. It was  
19    something that I didn't want there, and that's when I erased  
20    it is when he got out, because he looked at it, too, and I  
21    didn't want him reading what I said.

22          Q.     What did you say?

23          A.     Well, I don't remember what I said.

24          Q.     You don't remember what your notation was?

25          A.     No. I'm sure it had something to do with fighting,

1     though.

2           Q.     But right now we can't read that diary and tell what  
3     you wrote on that day, can we?

4           A.     You have a police report. You already know what  
5     happened that day.

6           Q.     No, I'm referring to what you wrote in your personal  
7     diary that has now been put into evidence by the defense. We  
8     cannot read your entry that day, can we?

9           A.     No, sir.

10          Q.     Are you telling this jury that you have an  
11     independent recollection of Jedidiah Murphy staying at home  
12     with you on August the 26th, 1997?

13          A.     He went to work August the 26th that night. He  
14     would have had to come home the next morning because he was  
15     in my car. I went to work on the 28th. He was keeping my  
16     kid -- our kid.

17          Q.     When he came home from work on August the 26th, what  
18     time did he get home?

19          A.     He always -- I don't remember what time he got off.  
20     I don't remember his hours. He always came home in the  
21     mornings.

22          Q.     What did y'all talk about that day?

23          A.     Sir, I don't know. The only reason I know this is  
24     because I have it wrote down.

25          Q.     Yeah. This notation makes absolutely no mention of

1 Jim or Jedidiah Murphy, does it?

2 A. If you read the whole calendar, it doesn't mention  
3 him. It says if we fought or it says we stayed home or --

4 Q. Yeah --

5 A. -- stayed here.

6 Q. That's right. There are several notations -- if  
7 you'll read this entire -- there's a lot of notations about  
8 Jim and I stayed home, Jim and I went to Wal-Mart, Jim and I  
9 went to Texarkana. There's plenty of notations when you do  
10 something together with Jim Murphy, isn't there?

11 A. Yes, but when we stayed home it just says stayed  
12 home or stayed home and that's all really.

13 Q. He had another house back during this period of  
14 time, didn't he?

15 A. His mother did and Ms. Gray.

16 Q. I mean, there's a lot of notations -- for instance,  
17 I notice in May and June of '97 where you said went over to  
18 Jim's house, stayed at Jim's house, isn't there?

19 A. Of '97? Yes, because he was living with his mother  
20 at that time because we have not moved into the trailer. Or  
21 it says on May 13th that we worked on house. That means we  
22 worked on where I'm living now.

23 Q. Uh-huh. Back on August 26th, what time did he go to  
24 bed when he got in from work?

25 A. Sir, I don't recall.

1 Q. What time did he get up?

2 A. I don't recall.

3 Q. What did y'all have to eat?

4 A. I don't recall.

5 Q. I mean, you have no independent recollection really  
6 of what happened on that day, do you?

7 A. If I would have wrote it down, I would remember.

8 Q. And the only thing again that you wrote down on that  
9 day is "stayed home"?

10 A. Home.

11 Q. Two words, right? Two words?

12 A. Yes, sir.

13 Q. Since you were at home, no one else was using your  
14 automobile that day, were they?

15 A. No.

16 Q. So if the defendant had wanted to use your  
17 automobile to drive maybe to Arlington, I mean, that vehicle  
18 would have been available to him, wouldn't it?

19 A. To go to Arlington, no.

20 Q. Since you were not using it that day, were you?

21 A. No, it would not have been available.

22 Q. Well, if he told you that he was going to Arlington?

23 A. No.

24 Q. You were just going to make him stay home?

25 A. More or less.

1 Q. How many jobs has the defendant held since you've  
2 known him?

3 A. I don't recall.

4 Q. 10, 15, 20? He doesn't work at any one place for  
5 very long, does he?

6 A. There's been a couple, but not very many, no.

7 Q. His regular habit is to work a very short period of  
8 time. Then he leaves a job for whatever reason, doesn't he?

9 A. I don't believe it's planned that way.

10 Q. It just happens that way though, doesn't it?

11 A. Yes, sir.

12 Q. He'll leave, he'll stay off for a while, and then  
13 get another job at another place, won't he?

14 A. When he finds one, yes, sir.

15 Q. Then the pattern just seems to repeat for whatever  
16 reason, doesn't it?

17 A. Yes, sir.

18 MR. DAVIS: That's all I have, Your Honor.

19 MS. LITTLE: May I approach the witness, Your  
20 Honor.

21 THE COURT: You may.

22 Redirect Examination

23 By Ms. Little:

24 Q. Chelsea, where's the actual diary? Some of this is  
25 in purple ink. Some of it's in gold ink; is that right?

1 A. Right.

2 Q. And these are entries you made each day because you  
3 kept a little log of yourself. And lots of days not anything  
4 happens, but you always put something; is that right?

5 A. Yes, ma'am.

6 Q. And there's no way you have any independent memory  
7 now of what someone ate or what time they went to bed or  
8 anything like that; is that correct?

9 A. Yes, ma'am.

10 Q. In fact, it would probably be pretty suspect if you  
11 knew that, wouldn't it?

12 How do you know Mandy Kirl?

13 A. Back in '94 when I met Jim, Jim, Shod, and Mandy  
14 hung around each other.

15 Q. Jim, Shod, and Mandy hung around together?

16 A. Uh-huh.

17 Q. What color was her hair then?

18 A. Black, if I can remember correctly.

19 Q. Okay. At that time were you living with Jennie?

20 A. Yes, ma'am.

21 Q. And y'all had an apartment together. I think you  
22 testified you took care of her child and she went to work; is  
23 that right?

24 A. Yes, ma'am.

25 Q. Were Jim and Shod at your place a lot of the time?



1 A. Yes, ma'am.

2 Q. In fact, they cooked over there, they slept over  
3 there. They were there a lot, weren't they?

4 A. Yes, ma'am.

5 Q. And did Mandy Kirl come with them to your apartment  
6 some of the time?

7 A. Yes, ma'am.

8 Q. And the drinking and the weed smoking and stuff,  
9 that went on then, didn't it?

10 A. Yes, ma'am.

11 Q. She was a party to that?

12 A. Uh-huh.

13 Q. Can you remember any specific time that she would  
14 have been there or not? It's been a long time ago.

15 A. I can't remember. It was when Jim was -- around his  
16 graduation. They came before and after. I don't remember  
17 dates, times.

18 Q. Okay. Did you ever see that there was any trouble  
19 between any of the three of those people?

20 A. No.

21 Q. And they would be there and eat and, you know, drink  
22 and smoke weed and stuff like that?

23 A. Just normal, yes, ma'am.

24 Q. Did you ever see any signs that Mandy Kirl was  
25 afraid of Jim?

1 A. No, ma'am.

2 Q. Or Shod or anybody else for that matter?

3 A. No, ma'am.

4 Q. Do you recall Jim going to a graduation party?

5 A. I remember him going to a graduation, coming to our  
6 house and getting dressed.

7 Q. Before he went to the party?

8 A. Yes.

9 Q. And do you know anything about what happened then?

10 A. No.

11 Q. If anything?

12 A. No, ma'am.

13 Q. But you've seen Mandy Kirl at your apartment since  
14 then with Shod and Jim?

15 A. Yes.

16 MS. LITTLE: That's all I have. Thank you.

17 Recross-Examination

18 By Mr. Davis:

19 Q. Ms. Willis, I want you to look please at August the  
20 25th of 1997 in your diary. What notation did you make on  
21 that day?

22 A. August 25th?

23 Q. Yes.

24 A. Stayed home.

25 Q. Same notation that you made for August 26th?

1 A. Yes, sir.

2 Q. Where was the defendant that day?

3 A. We would have been at home.

4 Q. You sure?

5 A. As far as I can remember and what my calendar says,  
6 yes, sir.

7 Q. You wouldn't have let him take the car that day  
8 either, would you?

9 A. If Jim was not going to work or to the grocery store  
10 or to my dad's house, no.

11 Q. Do you know how he got to Canton that day to report  
12 to his probation officer?

13 A. Well, excuse me, probation. No, I don't know.  
14 Unless I took him or he took the car.

15 Q. Well, you stayed home that day, didn't you?

16 A. Well, going to Canton is not --

17 Q. I mean, there are other occasions when you say Jim  
18 went to court, right?

19 A. Court and going to see the probation officers is  
20 totally different.

21 Q. Your notation on August 25th is stayed home, the  
22 same one you made for August 26th, the day following --

23 A. I made it on --

24 Q. Is your testimony -- is your testimony now that you  
25 went to Canton that day or did you stay home like you --

1 A. Sir, I don't know. All I have is what I wrote down.

2 Q. And your initial response to me was that the  
3 defendant stayed home that day with you, right?

4 A. We didn't do nothing out of the ordinary. It says  
5 the same thing on the 7th, 8th, and 9th, too.

6 Q. Do you know whether or not the defendant was having  
7 money problems back on August the 25th of 1997?

8 A. No.

9 Q. Do you know whether or not he was behind in his  
10 probation fees and restitution down in Canton?

11 A. He's always been behind on those.

12 Q. Do you know whether or not he was threatened with  
13 jail if he didn't come up with at least \$700 to pay to the  
14 Probation Department?

15 A. No.

16 Q. Do you know whether or not he got that threat on  
17 August the 25th of 1997, from the probation officers in  
18 Canton, Texas?

19 A. Kenneth Pruitt always threatened him with paying his  
20 fees. I do not know what day.

21 Q. Have you had a chance to look at the records from  
22 the Van Zandt County Probation Department?

23 A. No, sir.

24 Q. You don't know whether there may be an entry for  
25 August 25th, 1997 or not, do you?

1 A. No.

2 MR. DAVIS: That's all I have, Your Honor.

3 Further Redirect Examination

4 By Ms. Little:

5 Q. It would be unusual to report on a Saturday and a  
6 Monday though, wouldn't it, in the same month?

7 A. Twice a month, yeah, unless he was going to  
8 community service.

9 Q. Okay. And would it be fair to say that staying at  
10 home means that substantially you were at home. It doesn't  
11 mean somebody went to go buy bread or something for the baby  
12 or going to probation?

13 A. Yes, ma'am.

14 Q. Is that right?

15 A. Yes.

16 Q. But nobody was gone all day, that kind of thing?

17 A. Yes, ma'am.

18 MS. LITTLE: That's all I have. Thank you.

19 Further Recross-Examination

20 By Mr. Davis:

21 Q. As a matter of fact, do you know whether or not Ken  
22 Pruitt had already filed a violation report with the District  
23 Attorneys Office down there in Canton when your husband came  
24 down there on August 25th or not?

25 A. No, sir.

1 MR. DAVIS: That's all I have, Your Honor.

2 MS. LITTLE: Nothing further.

3 THE COURT: You may step down, ma'am.

4 Defense may continue.

5 MS. LITTLE: We'll call Pam Sherman.

6 THE COURT: Ask you to raise your right hand,  
7 please.

8 (Witness sworn.)

9 THE COURT: Thank you. Have a seat to my left  
10 if you please, ma'am.

11 PAM SHERMAN

12 was called as a witness by the Defendant and, after having  
13 been first duly sworn, testified as follows:

14 Direct Examination

15 By Ms. Little:

16 Q. Would you state your name, please, ma'am?

17 A. Pamela Sherman.

18 Q. Ms. Sherman, where do you live?

19 A. In Terrell, Texas.

20 Q. Have you lived in East Texas most of your life or  
21 all of it?

22 A. For -- yes, for 20 or 30 years.

23 Q. Okay. Do you know Jim Murphy?

24 A. I do.

25 Q. How do you know him, Pam?

1 A. He's my second cousin.

2 Q. Are you related to his father?

3 A. His father would be my first cousin.

4 Q. And is that Donnie Kines?

5 A. That's Donnie Kines.

6 Q. Okay. Where did you grow up, Pam?

7 A. In Terrell and Kaufman, Texas, most of the time with  
8 my Aunt Margaret.

9 Q. And your Aunt Margaret, is she living now?

10 A. No, she's not. That was Donnie's mother. She died  
11 in '84, I believe.

12 Q. Okay. Did you grow up with Donnie Kines, the  
13 senior, Jim's daddy?

14 A. Yes, ma'am.

15 Q. What can you tell the jury about your life at that  
16 time and what the family life was like? What kind of person  
17 was Donnie Kines?

18 A. He was mean. He was a mean little boy. He was five  
19 years older than I was. And he tormented myself and my  
20 sister. He was -- would always get into trouble, like Aunt  
21 Maggie and Uncle Ed would always have to get him things. He  
22 chased us, tried to burn us with hot cigarettes. One time he  
23 killed my kitty cat with a fork, tried to drown me in a tank  
24 out behind the house. Did things like my cousins and I would  
25 go swimming in the tank and he would -- we would go in our

1 underwear when we were little girls and he would hide our  
2 clothes, take our clothes to the barn, throw them out in the  
3 woods. He cussed, just -- it was terrible.

4 Q. A pretty horrible existence for a child?

5 A. Yes.

6 Q. Did you stay in touch with him through the time that  
7 y'all grew up?

8 A. In touch. We lived in Terrell. I worked in  
9 Terrell, and part of that time I lived in Grand Saline which  
10 is further east than Terrell, but Aunt Maggie was like my  
11 mother. She was like my second mother. And so even though I  
12 didn't live with them when I was older, I would go and see  
13 about Aunt Maggie. She wasn't in good health and so I went  
14 over there frequently, several times a week.

15 Q. And in the -- after you had gotten -- how much older  
16 than Jim are you? About how many years older?

17 A. I'm old enough to be Jim Ed's mother -- I mean, he's  
18 probably 25. I'm 52.

19 Q. Okay. Did you know Donnie when he was married to  
20 Hope?

21 A. Oh, yes.

22 Q. How many times was Donnie married?

23 A. I'm not going to say I know exactly. I lost track  
24 about five. I think it was more than five.

25 Q. And whereabouts, if you know, did Hope fall on that



1 scale? Was she the last wife?

2 A. She was the last wife, that I know of.

3 Q. Okay. When they married, did they both have  
4 children from previous relationships?

5 A. Donnie had a little boy that I know of from maybe  
6 his first or second wife that I never knew after it was about  
7 a year old. I don't know of any children that Donnie had  
8 other than that one.

9 Now, Hope had children when she came into the  
10 marriage.

11 Q. Okay.

12 A. She had three, and I believe she was pregnant when  
13 she married Donnie.

14 Q. Do you know who those children were that she already  
15 had?

16 A. I know their names. Tonya, and Tamera, and Bob.

17 Q. Okay. And then when she married senior Donnie  
18 Kines --

19 A. Right, and they named him Donnie when he was born.

20 Q. And that's Donnie Tolar. Do you know his last name  
21 now?

22 A. Right.

23 Q. Do you know how long they stayed together?

24 A. I could figure it out. I mean, some of the kids  
25 came to live with me in '83 and --

1 Q. Who would -- which of the ones would have come to be  
2 with you?

3 A. Tamera and Hope -- I mean, Tamera and Holly came to  
4 live with me for a while in '83. And that's about the same  
5 time that Donnie and Jim Ed went to the Tolars in Grand  
6 Saline where I lived.

7 Q. Okay. And that's Jim's brother Donnie?

8 A. Right.

9 Q. That's the younger -- Donnie Jr.?

10 A. Right.

11 Q. What, if anything, did you observe in the  
12 relationship between Hope and Donnie Kines when they were  
13 married to each other?

14 A. They fought constantly, fought and drank and  
15 sometimes weren't home for days. Aunt Maggie would have the  
16 kids by herself. And Tonya, the oldest child, basically  
17 acted as a mother to all the kids.

18 Q. And how old was she at that time when the boys were  
19 little?

20 A. Well, she's 10 years older than Holly. Holly was 4  
21 when she came to my house. Tonya would have been 14, so 9,  
22 10, 11, 12, all those years, that's preteen, she did  
23 everything for the kids. She fed them. She changed  
24 diapers. She took care of them like she was their mother.

25 Q. Did you ever see any physical damage to anybody,

1 either Hope or Donnie?

2 A. Oh, Hope's -- I would see Hope when her whole face  
3 would be bruised and black and blue and swollen and stuff. I  
4 had seen Donnie hit her before. Donnie spanked the kids,  
5 whipped the kids with a belt, not like a daddy taking a child  
6 to the bathroom to give them a spanking for discipline, but  
7 just -- he would just rip his belt off for the least  
8 provocation and just -- just beat them.

9 Q. And do you know which children were beaten by  
10 Donnie?

11 A. It was usually the younger ones. I don't  
12 remember -- I've seen him slap and push the girls, Tonya and  
13 Tamera, and Bob some, but it was usually the -- Jim Ed and  
14 Donnie were the two that got it. Jim Ed and Donnie seemed to  
15 be the two that always got it.

16 Q. And that's Jedidiah Isaac Murphy who is here today?

17 A. Right.

18 Q. Do you know anything about a little game that he  
19 played with the kids about taking his boots off?

20 A. Yeah. On several occasions I witnessed him telling  
21 them to take his -- help him take his boots off. He was --

22 Q. How old would they have been then?

23 A. 7, 8 -- 6, maybe. He wore cowboy boots and anybody  
24 that's ever worn cowboy boots, they're kind of hard to get  
25 off. And he would ask them to help him pull his boots off,

1 and they would come over and grab the toe and the heel of the  
2 boot and he would sit on the couch and they would try to pull  
3 them off, but of course they couldn't, they were little. And  
4 we take his other foot and just put it into their chest and  
5 just shove it so that the boot would come flying off and the  
6 kid, the boot, and everything would hit the floor, hit the  
7 wall, hit whatever. And if they cried, they got a whipping.

8 Q. Do you know if there was ever any attempt at any  
9 kind of sexual contact on Donnie's part with any of these  
10 children?

11 A. I know that their -- I know what Tonya told me, and  
12 I know that -- that Donnie had sexually molested her. I  
13 don't know to what extent that meant, but I do know that it  
14 was most likely true and I believed her because I grew up in  
15 that house. And when I was 11 and Donnie was 16, he was  
16 always trying to do things like that to me. And there was no  
17 one there that could protect you. Nobody would believe a  
18 kid. So when she told me that, I believed her.

19 Q. And whose house was that, Pam?

20 A. At Aunt Maggie and Uncle Ed.

21 Q. Now, Aunt Maggie and Uncle Ed did the best they  
22 could to help everybody, didn't they?

23 A. Yes, ma'am.

24 Q. They were getting old though as time marched on.

25 A. They were.

1 Q. Did you -- did you ever involve yourself in trying  
2 to place Jim and Donnie anywhere?

3 A. I did. Uncle Ed, I believe, had died in late '83 at  
4 the time, and Aunt Maggie had heart problems and some lung  
5 problems and she was a diabetic and she had all these little  
6 kids to take care of. And that's when Hope -- I don't know  
7 where Hope was. I think at that time Hope had left Aunt  
8 Maggie's house and maybe gone to Dallas. She took the three  
9 bigger kids with her later, but the three little ones,  
10 Donnie -- Little Donnie, Jim Ed, and Holly needed a place to  
11 go and Aunt Maggie just couldn't take care of them anymore.  
12 And I told her that I would help her, and I was a member of a  
13 church in Grand Saline and I knew of a couple families that  
14 were interested in adopting these -- the kids.

15 Q. Uh-huh.

16 A. And I talked to them and the Tolars were wanting to  
17 take the boys and the Veeches were able -- wanting to take  
18 Holly. They didn't have any girls, and they wanted a little  
19 girl. And she was about 4 at the time. I think the boys  
20 were maybe 8 and 9. And so I worked with them and the pastor  
21 at the church and Aunt Maggie to try to find a home for them  
22 that would be safe and good and --

23 Q. You did the best you could.

24 A. Yes, ma'am.

25 Q. Was there a time though that Hope left the children

1 at Buckner's Orphanage?

2 A. She took the three bigger ones with her and left the  
3 three little ones at Buckner's. I can't remember if it was  
4 for a few days or a few weeks. I just don't remember. I  
5 know it was for more than a day or two. And she said she was  
6 going to take her kids and go to Dallas and leave Donnie's  
7 kids at Buckner's because she couldn't take care of them  
8 anymore. And my Aunt Maggie couldn't stand it, and she went  
9 and got them. And I brought Holly home with me. And later  
10 on then that's when the boys went to the Tolar's, and then we  
11 found a place for Holly and she went to the Veeches'. And it  
12 was -- we all lived in Grand Saline then.

13 Q. Hope divorced Donnie, didn't she?

14 A. That's what I heard. I mean, that's what they told  
15 me.

16 Q. Was that -- Donnie is not living any longer, is he?

17 A. No, Donnie died in late '83 or early '84.

18 Q. Was that due to alcoholism?

19 A. Yes, ma'am, he died from -- he had a bad pancreas  
20 and he had been in the hospital several times with acute  
21 pancreatitis and he died at home.

22 Q. And how old was he then?

23 A. 40.

24 Q. But he and Hope were no longer together at that  
25 time?

1 A. No, they were not.

2 Q. Now, do you recall if the police were ever called  
3 when he beat up Hope, or was this before --

4 A. I know that the police were out there a number of  
5 times for him beating up on Hope or for pushing Aunt Maggie  
6 and stuff, but Kaufman County and all the police in Kaufman  
7 know them and I'm sure -- I remember them coming. I was  
8 there several times when they came, but I don't remember if  
9 there were any like particular reports filed or anything like  
10 that.

11 Q. This would be before there had become such an  
12 emphasis on family violence like --

13 A. Right.

14 Q. -- we have today?

15 A. Right. They would just tell Donnie to calm down. I  
16 never remember them taking him to jail. They would just tell  
17 him to calm down, go to bed, you know. And we knew them, the  
18 police -- when they showed up, we knew all of them by name,  
19 and they knew all of us, the Kineses.

20 Q. Did you ever see any other damage to Hope besides  
21 the bruising? Did you ever see her teeth knocked out?

22 A. Yes, I saw at one point. I know she had to have  
23 some extensive dental work done because of some teeth knocked  
24 out.

25 Q. Do you remember how Jim reacted when he had to leave

1 Aunt Maggie? Or were you aware of that?

2 A. Aunt Maggie's house was probably the only safe place  
3 that he ever knew when it was just Aunt Maggie and the kids  
4 by their self. I mean, she was a good person, very loving  
5 and -- I'm sure she did the best she could. And so without  
6 his mom and without his dad, to have to leave Aunt Maggie's  
7 house was terrible for him. And he told me he -- that he  
8 just felt like he was being thrown away, that nobody wanted  
9 him.

10 Q. Did he actually run after the car or anything? Do  
11 you know about that?

12 A. (Nods head.) He did.

13 Q. And you placed him with the Tolars?

14 A. Yeah, I helped that happen.

15 Q. Did you keep up with him after that?

16 A. I did for months -- for months I did, until Terry  
17 and Celeste asked me not to, to try to separate myself  
18 because they were trying to make a family with Jim Ed and  
19 Little Donnie and their boys. They had three boys of their  
20 own. And they felt like my involvement in Jim Ed and  
21 Donnie's life was keeping them attached to the past and that  
22 they couldn't get over it, they couldn't get past it. And  
23 against my better judgment, I thought I should do what they  
24 asked. That was their parents and -- and so I did.

25 Q. And at the time that Jim and Donnie went to stay



1 with the Tolars, was there anything about them you noticed  
2 that seemed out of whack?

3 A. Not at all. I mean, they were very -- they were  
4 very strict people and -- but their three boys were fine and  
5 they were well mannered and Terry and Celeste were both  
6 involved in the church and seemed like good honest Christian  
7 people.

8 Q. Have you seen them from that day to this?

9 A. I saw him a few times in Grand Saline, and I live in  
10 Terrell now. And I saw him in the Terrell -- in the Terrell  
11 Wal-Mart when he was about 18 or 19.

12 Q. Did you recognize him?

13 A. Oh, yeah.

14 Q. Did he speak to you?

15 A. He said, oh, Aunt Pam, I haven't seen you in a long  
16 time and he gave me a hug and he told me he was fine.

17 Q. Okay. I know this has been hard on you. Thank you,  
18 ma'am.

19 MS. LITTLE: I pass the witness.

20 THE COURT: Do you need a break before we --

21 THE WITNESS: No, I'm fine, I'm sorry, I --

22 THE COURT: If you should -- if you should  
23 want to take a break, your request will be granted.

24 THE WITNESS: Thank you.

25 THE COURT: Do you want to continue?

1 THE WITNESS: Yes, I'm fine. Thank you.

2 Cross-Examination

3 By Mr. Davis:

4 Q. Ms. Sherman, if you need to take a break at any  
5 time, you just let me know. Okay?

6 Ms. Sherman, when you approached the Tolars about  
7 taking the defendant into their home, at first they were a  
8 little bit reluctant, weren't they?

9 A. Well, I think they told me that they were going to  
10 think about it, talk about it. They weren't rich people,  
11 there was going to be, you know, money involved because of  
12 just filing and lawyers and that sort of thing.

13 Q. I mean, they already had three children in their  
14 home --

15 A. Right.

16 Q. -- didn't they?

17 A. Right.

18 Q. This was not a situation where they were out  
19 actively pursuing the adoption of two more boys, were they?

20 A. No.

21 Q. I mean, they thought about it at your request,  
22 didn't they?

23 A. Yes.

24 Q. And you were relieved when they decided to take both  
25 Donnie and Jim into their home, weren't you?

1 A. Yes.

2 Q. And as I understand your testimony, they were  
3 expressing a desire to try to make these two boys become a  
4 full part of their family, weren't they?

5 A. That's right.

6 Q. How many times did you see the defendant while he  
7 was living with the Tolars?

8 A. I'm going to say -- I mean, I -- maybe less than 10.

9 Q. And when you next saw him when he was 18 or 19 years  
10 old in Terrell, he said he was fine, didn't he?

11 A. That's what he said.

12 Q. I mean, at what time did he tell you that these two  
13 people were abusing him and his brother?

14 A. He never told me that.

15 Q. Never did tell you that these people had mistreated  
16 him, right?

17 A. No.

18 Q. And from your observations in talking with him, I  
19 mean, he was very active in a lot of activities while he  
20 lived with the Tolars, wasn't he?

21 A. I'm honestly not sure what he was doing when he was  
22 living with the Tolars. I tried to keep my distance.

23 Q. Okay. Was he attending church?

24 A. Yes.

25 Q. Because you were attending the same church with the

1 Tolars at that time, weren't you?

2 A. I did for a short time, but my husband was a pastor  
3 and we -- I went to the church where he pastored.

4 Q. As far as any other outside activities, such as  
5 baseball or things outside the school, that's really not  
6 something that you would be familiar with --

7 A. No.

8 Q. -- correct? You didn't -- you didn't talk with him  
9 when he went over there to Fruitvale Children's Shelter, did  
10 you?

11 A. No.

12 Q. So it was a number of years before you saw him  
13 again, right?

14 A. That's right.

15 MR. DAVIS: That's all I have, Your Honor.

16 MS. LITTLE: I don't have anything further.

17 THE COURT: Thank you very much. You may step  
18 down, ma'am.

19 MS. LITTLE: May this witness be excused?

20 MR. DAVIS: No objection.

21 THE COURT: You may be excused or you may  
22 remain in the courtroom if you wish.

23 MS. LITTLE: Randy Crow.

24 THE COURT: Good afternoon. May I ask you to  
25 raise your right hand, please.

1 (Witness sworn.)

2 THE COURT: Have a seat to my left, please.

3 RANDY CROW

4 was called as a witness by the Defendant and, after having  
5 been first duly sworn, testified as follows:

6 Direct Examination

7 By Ms. Little:

8 Q. Would you state your name, please, sir?

9 A. Randy Crow.

10 Q. Mr. Crow, where do you live?

11 A. Kaufman, Texas.

12 Q. Have you lived in that area all your life?

13 A. Yes, ma'am.

14 Q. In fact, how long has your family been in Kaufman?

15 A. I'm 41.

16 Q. So at least that long that you know of?

17 A. Uh-huh.

18 Q. Do you know Jim Ed?

19 A. Uh-huh.

20 Q. Or Jedidiah Isaac Murphy?

21 A. Yes, ma'am.

22 Q. How long have you known him?

23 A. Three to four years.

24 Q. And how was it that you met him?

25 A. Through a rehab recovery program.

1 Q. Which one was that?

2 A. AA.

3 Q. And that was about three or four years ago?

4 A. Yes, ma'am.

5 Q. Tell the jury how you came to meet him or how y'all  
6 came to come into contact together at that meeting?

7 A. AA is a program of recovery. Tell your story and  
8 you get -- you got 12 steps to work. And then Jim was  
9 attracted to me. He wanted what I had. And that's the way I  
10 live is I got to keep it away -- I've got to give it away to  
11 keep it.

12 Q. Now, you say that Jim was attracted to what you had.

13 A. Uh-huh.

14 Q. How long have you been going to AA meetings?

15 A. I have 7 years, 11 months, and 3 days today.

16 Q. And you've been married most of your life, haven't  
17 you?

18 A. 24. Last week was 23 years.

19 Q. Okay. And your wife is Rhonda?

20 A. Lori.

21 Q. Did she come with you today?

22 A. Yes, ma'am.

23 Q. Before you quit drinking, was your life pretty  
24 rocky?

25 A. Oh, yes, ma'am.

1 Q. In fact, you told me that you and Rhonda had been up  
2 and down and in and out for a long time before you quit  
3 drinking?

4 A. Yes, ma'am.

5 Q. And did you meet somebody who had something you  
6 wanted?

7 A. Yes, ma'am, there's a -- there was a guy at the  
8 meeting. I had my sister take me to the meeting, help me --  
9 I could walk probably here to there and I'd fall from crying  
10 and I had no idea why. My wife and I were separated and I  
11 just knew I needed help. I went to the head shrinks and the  
12 doctors and stuff to get help and they -- she thought that I  
13 might be an alcoholic and I agreed with her and my journey  
14 began there.

15 Q. And what was it about this person that you saw there  
16 that attracted you?

17 A. Big, tall, bald-headed, and he was smiling and  
18 laughing and there was nothing funny in my whole life that  
19 was going on through my head at the time and I wanted what he  
20 had. So he began -- he became my sponsor.

21 Q. Okay. And you were able to quit drinking?

22 A. Yes.

23 Q. Now, you lived all of your life with your own  
24 parents, didn't you?

25 A. Yes, ma'am.

1 Q. And, in fact, y'all go back so far -- do you know  
2 the Kines family by reputation or the fact that they --

3 A. I just knew the Kineses from my dad and them as  
4 kids, trading their gardening corn, peas, whatever, for farm  
5 equipment, horse-buggy wagon deal, way back.

6 Q. But you didn't know them personally.

7 A. No, ma'am.

8 Q. Just knew of them?

9 A. Just knew of them.

10 Q. Small community?

11 A. Yes, ma'am.

12 Q. And you didn't know Jim was from that family?

13 A. No, ma'am.

14 Q. Did he approach you at the AA meeting?

15 A. Yeah. Yes, ma'am.

16 Q. And how did it -- how did the relationship develop  
17 from there?

18 A. Just start talking, and if he wanted what I had, I  
19 put him through a process of open the book to the prefix,  
20 read the first 164 pages and then we'll talk about what you  
21 read.

22 Q. Okay. What are the first 164 pages?

23 A. This's just how -- how the program works. This is  
24 how it works, and he's got to do this to get this.

25 Q. Okay.



1           A.    It took me 33 years to get there, so there's a lot I  
2 got to unlearn, my character defects. If I stop -- if my  
3 truck would stop going from work here in Dallas going home,  
4 if I stop exiting off on Carroll Avenue at the liquor store,  
5 then I might not get to buy no beer. That's a hard habit to  
6 break. I used to stop there two or three months. What am I  
7 doing? I don't this no more.

8           Q.    Is there bad alcoholism in your family?

9           A.    Well, there is, but I'm the only one that I know  
10 that's doing the program.

11          Q.    Okay. And do you think you helped Jim?

12          A.    Oh, sure. Sure.

13          Q.    Did he get involved in the program and --

14          A.    Yes, ma'am.

15          Q.    -- and make you his sponsor?

16          A.    Yeah. I saw Jim get a six months of sobriety that  
17 was real good and he was on fire. I've been blessed not to  
18 have a slip, and Jim had a slip. And a slip is what it is.

19          Q.    Tell the jury what a slip is, please.

20          A.    You go back to drinking.

21          Q.    That's pretty common with drugs and alcohol, isn't  
22 it? I think we all know that from this courtroom -- working  
23 here for years.

24          A.    Yes, it's just another experience.

25          Q.    How far did he get in the program?

1       A.    Me and Jim were working on probably his 4th step.  
2   And you do a 5th step after you write down your 4th step on  
3   paper.  You're looking at yourself on a piece of paper.  And  
4   then he comes and discusses that with me.  When he starts  
5   slowing down, then I tell him some of my story, and he picks  
6   it back up -- you never ever complete it.  It's always an  
7   ongoing deal.

8       Q.    Always ongoing.  And basically since you quit  
9   drinking, you spend a good portion of your time trying to  
10  help Jim or other people that have drinking problems?

11      A.    Yes, ma'am.

12      Q.    Did you get to know any of Jim's family in the  
13  course of time that you worked with him?

14      A.    Yes, ma'am.

15      Q.    In fact, there's somebody at your house right now?

16      A.    Yes, ma'am.

17      Q.    Did you get to know any of Jim's family in the  
18  course of the time that you worked with him?

19      A.    Jim's mother and Chelsea and the little baby.

20      Q.    And did y'all socialize?

21      A.    Oh, yeah, sure.  Socializing was at my house, just  
22  showing that we can have fun without the drinking or the  
23  drugs.  Playing games, I'm -- I'm 41 now.  Probably at the  
24  time I was probably 39, playing jacks in my kitchen floor  
25  with me with a bunch of grown-ups in the floor.  They're

1 coming over to see me in the floor playing jacks. Just good  
2 clean fun, eating and -- card games at the table and marble  
3 games in the living room, that type.

4 Q. So you knew Chelsea, and you know Jim together in a  
5 relationship?

6 A. Yes, ma'am.

7 Q. Did it remind you at all of your relationship with  
8 your wife?

9 A. Oh, yes, ma'am.

10 Q. How so?

11 A. I met my wife when she was 12 and I was 14. We're  
12 still together. We raised three children, the clubs, the  
13 drinking, the not coming home at night. Most of the time I  
14 worked out of town and wasn't home, period. Come home on the  
15 weekends enough time to get her pregnant to have another  
16 baby, just -- we grew up together learning how to live.

17 Q. And did you have a lot of trouble in those early  
18 years when you were drinking?

19 A. Oh, gosh, yes, ma'am.

20 Q. And did you see a lot of that in the relationship  
21 between Jim and Chelsea?

22 A. Yes, ma'am, Jim and Chelsea, I told them -- they  
23 were talking about some of their problems, me in the back  
24 seat, and I said y'all remind me so much of my wife and  
25 myself, it's unreal, but they got a chance because they're

1 asking for help. So --

2 Q. And do you know how long ago it was that Jim made  
3 the six months of sobriety and then fell off?

4 A. To put an exact date on it, I'm going to say it was  
5 two years, close to.

6 Q. Did you continue to be his sponsor after that?

7 A. I continued to be Jim's sponsor up until -- it's  
8 called tough love. And that's where -- me and Jim got too  
9 close to each other as a -- I was more like a father figure  
10 to him in trying to -- I had to tell him I wasn't going to be  
11 his sponsor no more so it would give him a chance to grow, to  
12 move on, and maybe to get him moving in the steps. He got  
13 kind of -- his complacency -- you get to feeling real good,  
14 and you want to stay there. You can't stay there, because  
15 you'll get complacent and your old ways will come back and  
16 get you.

17 Q. Okay.

18 A. Then you're subject to have another slip or drink  
19 again or whatever.

20 Q. So did you have a talk with him about the fact that  
21 he was seeing you too much as a father?

22 A. Yes, ma'am. And I suggested my sponsor who's has 24  
23 or 25 years now. I told Jim Ed, to talk to Les and see if  
24 Les will sponsor you to -- to get him moving more.

25 Q. How did Jim react to your telling him he would have

1 to go away?

2 A. It devastated Jim at the time. If I knew it was  
3 going to have that kind of effect on him, I wouldn't have  
4 done it, but you never know who you're dealing with. If  
5 you're dealing with an alcoholic, you've got -- he could be a  
6 thief, he could be a this, he could be that, he could be lots  
7 of other things that go along with it.

8 Q. You did the best you could, though, didn't you?

9 A. Yes, ma'am.

10 Q. You do believe in responsibility?

11 A. Yes, ma'am.

12 Q. But you also know that there are -- alcoholism is --  
13 can be genetic and there are just problems there?

14 A. Yes, ma'am. I didn't ask to be an alcoholic. I was  
15 born an alcoholic.

16 Q. And are you aware of the different -- at least the  
17 fact that Jim has had some different homes over his life?

18 A. Yes, ma'am.

19 Q. And not a lot of stability that stayed constant?

20 A. Right.

21 Q. Are you aware of Jim ever trying to commit suicide?

22 A. Yes, ma'am.

23 Q. What can you tell the jury about that?

24 A. Jim was -- he probably lived three miles from where  
25 my house is, the park, which at the beginning we didn't know

1 we were that close together. But his mother called me, that  
2 Jim was in bad shape and he's got a gun in his truck, and  
3 could I come down and help. And I went down to the end of  
4 the street and he was just drunk, and he did have the gun in  
5 the truck and I tried to talk to him. It wasn't going to  
6 work, so the best thing I knew to do was leave. Get me out  
7 of the situation. My wife was with me, and it was just a bad  
8 situation.

9 Q. He was not -- he didn't kill himself obviously. Did  
10 he try to?

11 A. Why the gun misfired, I do not know, but it did.  
12 It's the deal with Jim and Chelsea and him trying to see his  
13 little girl, and she's living with another guy, that kind of  
14 thing, and it was bouncing around, just kids growing up.  
15 That's all it is.

16 Q. And you were aware that Chelsea had a child that was  
17 someone else's?

18 A. Yes, ma'am.

19 Q. That's not Jim's?

20 A. She struck us as the child could be this or that,  
21 and it was with a black man. And she told Jim, Jim told me  
22 and then -- and we go to the hospital, the day she has the  
23 baby, and she had the baby and Jim Ed and me both supported  
24 her as the best we could, accepting the fact, and it did  
25 happen. It was true.

1 Q. And Jim has taken care of that baby?

2 A. Yes, ma'am.

3 Chelsea over here, she's got kidney problems, back  
4 problems, feet problems. Jim Ed had hurt his hand, and was  
5 not working and he would baby-sit while she worked and go on  
6 and -- there was no doubt in my mind he loved Chelsea.

7 Q. And took care of the kids?

8 A. And he really loved the kids.

9 Q. And played with those kids?

10 A. That little baby, yes, ma'am.

11 Q. About how long ago was it that you told Jim he'd  
12 have to go get another sponsor?

13 A. Probably year and a half. It's been a year and a  
14 half.

15 Q. From right now?

16 A. (Nods head.)

17 MS. LITTLE: That's all I have. Pass the  
18 witness.

19 Cross-Examination

20 By Mr. Davis:

21 Q. Mr. Crow, my name is Greg Davis. We've never met,  
22 have we?

23 A. No, sir.

24 Q. Mr. Crow, for the last -- I think you said you had  
25 met the defendant about three or four years ago?

1 A. Yes, sir.

2 Q. And during the time that you and he were together, I  
3 mean, you made every effort that you could possibly make to  
4 help this man, didn't you?

5 A. Yes, sir.

6 Q. I mean, you were there for encouragement when he  
7 needed it?

8 A. Yes, sir.

9 Q. You were there to try to instruct him with regards  
10 to the 12-step program, right?

11 A. Yes, sir.

12 Q. Really made every effort that you could to see that  
13 he would successfully complete that 12-step program just like  
14 you had?

15 A. You don't ever successfully complete it. I've got  
16 to live it everyday to have it.

17 Q. In order to do that, in order to stay away from  
18 alcohol and to stay on that program, you had to make a  
19 conscious decision that that's what you wanted in your life,  
20 didn't you?

21 A. Yes, sir.

22 Q. But you've been able to do it now for how long?

23 A. Seven years, eleven months, and three days.

24 Q. You said just a moment ago that when you deal with  
25 an alcoholic, you don't know whether you're dealing with



1 something else, he may be a thief or something else really  
2 unknown to you, right?

3 A. Right.

4 Q. When you were trying to deal with the -- with the  
5 defendant, did you know that he was in fact a thief?

6 A. I didn't -- I did not know he was a thief, no, sir.

7 Q. Did you know what other things he may have done to  
8 other individuals?

9 A. The only thing I knew about as far as -- as him  
10 being a thief was a little piece of paper that y'all have  
11 that counts up to this point. I did see that piece of paper.

12 Q. When is the last time that you talked with the  
13 defendant?

14 A. To Jim?

15 Q. Yes, sir.

16 A. Yesterday.

17 Q. Yesterday. And y'all have remained pretty close,  
18 haven't you?

19 A. Yes, sir. It's a privilege for Jim to want to spend  
20 time with me or even talk to me.

21 Q. Y'all discuss this offense?

22 A. To the -- I've asked Jim over and over and over if  
23 what he can tell me any different than he already remembers  
24 and it's just the same thing.

25 Q. He hasn't told you anything more about that?

1 A. No, sir.

2 Q. And you've made several attempts to ask him?

3 A. I ask him every time I talk to him. Is there  
4 something different that he may remember about what  
5 happened. And we wouldn't all be sitting here -- if he  
6 hadn't told what he told, we wouldn't be here now.

7 MR. DAVIS: That's all I have, Your Honor.

8 Redirect Examination

9 By Ms. Little:

10 Q. And he told you that he didn't mean to kill Ms.  
11 Cunningham, didn't he?

12 A. No, ma'am, he did not.

13 Q. You're saying he didn't mean to kill her?

14 A. He did not mean to kill her.

15 Q. But he did kill her?

16 A. But he did.

17 Recross-Examination

18 By Mr. Davis:

19 Q. And you believe him, don't you?

20 A. Yes, sir, with all my heart.

21 Q. Did you ever discuss the kidnapping that occurred  
22 over in Arlington in August of 1997?

23 A. Jim and I looking at that piece of paper was -- that  
24 was the only one that we did not -- we couldn't put -- Jim  
25 could not put a fact that he did or he didn't or who the

1 woman was or whatever, and so --

2 Q. He couldn't remember whether he did it or not?

3 A. Right.

4 Q. Thank you, sir.

5 A. All right.

6 THE COURT: Ms. Little.

7 Further Redirect Examination

8 By Ms. Little:

9 Q. Randy, did you -- did you observe any positive  
10 qualities in Jim during your relationship with him?

11 A. Yes, ma'am.

12 Q. What kinds of things could you tell the jury about?

13 A. I took Jim -- there's a process you have to go  
14 through to get somebody to help for like a rehabilitation  
15 center and -- he had to go to the emergency room, and he  
16 wound up in Greenville, Texas. It's call Glen Oaks.

17 Q. It's called what?

18 A. Glen Oaks.

19 Q. Okay.

20 A. And you go there and you can walk up in the door and  
21 say I'm an alcoholic and I need help and you're in. And Jim  
22 went there and you go to group meetings all during the day,  
23 three or four meetings during the day, and then I was taking  
24 Jim cigarettes every other day or going to visit with him  
25 when I could and talk with him. And some of the people that

1 were in there said they didn't -- as we were talking in a  
2 little room and I'm talking with Jim and there's other people  
3 in there, and -- they said we don't know why Jim Ed, he has  
4 all the answers to the questions, because he's already had  
5 the experience of working with the steps.

6 Q. Uh-huh.

7 A. He knew what to do, but the consistency part with --

8 Q. He knew what to say, but he didn't know how to live  
9 it; would that fair be to say?

10 A. Yeah, right.

11 Q. Did you find him to be a loyal friend to you?

12 A. Oh, yes, ma'am.

13 Q. In fact, you loved him and he loved you; is that  
14 right?

15 A. Yes, ma'am.

16 Q. Was he helpful to you as a friend?

17 A. Oh, yes, ma'am.

18 Q. Did you --

19 A. The way Jim, the way -- the way for me to keep sober  
20 is when Jim comes to me for the help is I'm looking right at  
21 myself when I'm looking at Jim. I'm looking right at me.  
22 This is the way I used to be too. For every one of Jim's,  
23 there's 72 more of him. For every one of me there's 74 -- 72  
24 more out there that need help that's not getting help at  
25 all. The effort was there.

1 Q. He just couldn't overcome all his problems?

2 A. That's right. It's a time process. It takes time.

3 MS. LITTLE: Thank you.

4 MR. DAVIS: Nothing further.

5 THE COURT: Thank you, sir. You may step  
6 down.

7 THE COURT: Sheriff, let's take a 15-minute  
8 break.

9 THE BAILIFF: All rise.

10 (Jury removed from courtroom.)

11 THE COURT: Counsel, we'll resume at 2:45.

12 (Recess taken.)

13 THE COURT: If we can have the jury, please.

14 THE BAILIFF: All rise.

15 (Jury returned to courtroom.)

16 THE COURT: Let the record reflect the jury is  
17 returning to the courtroom at this time.

18 Jury may be seated.

19 Mr. Murphy, counsel, visitors in the gallery, you  
20 may be seated.

21 Raise your right hand.

22 (Witness sworn.)

23 THE COURT: Have a seat to my left, if you  
24 please, sir.

25 Defense may continue.

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JERRY WOOD

was called as a witness by the Defendant and, after having been first duly sworn, testified as follows:

Direct Examination

By Ms. Little:

Q. State your name, please, sir.

A. Jerry Wood.

Q. Where are you employed?

A. Kaufman County Sheriff's Department.

Q. Did you have occasion to arrest Jim Murphy some while back in Kaufman County?

A. Yes, ma'am, I did.

Q. What was that date?

A. May 13th, 1999.

Q. What kind of call did you receive? Is it deputy, or what do I call you?

A. I'm a sergeant now. I was a deputy at the time. As a deputy, I received a call with reference to a possible attempted suicide.

Q. And where was that call?

A. Faith Baptist Church.

Q. Is that in town there in Kaufman, or is it --

A. No, ma'am, it's in -- it's out in the country.

Q. Okay. And did you respond to that call?

A. Yes, ma'am, I did.

1 Q. What did you find when you got there?

2 A. We set up -- dispatch advised that the vehicle that  
3 the suicidal subject was driving was at that scene. Me and  
4 my deputy set up on it at a gas station where we observed the  
5 vehicle.

6 Q. And so you got a vehicle description?

7 A. Yes, ma'am.

8 Q. You knew what you were looking for?

9 A. A maroon Chevorlet pickup.

10 THE REPORTER: A maroon?

11 THE WITNESS: Yes, ma'am.

12 Q. (By Ms. Little) And did you -- did the car cross  
13 your path?

14 A. Yes, ma'am, he did.

15 Q. And what did y'all do?

16 A. I attempted to stop the vehicle, activated my  
17 emergency lights and sirens. The vehicle continued driving  
18 approximately 45 miles an hour for about two or three miles  
19 until it stopped.

20 Q. Okay. So it didn't stop right away?

21 A. No, ma'am.

22 Q. But he didn't speed off?

23 A. No, ma'am.

24 Q. And race away or anything?

25 A. No, ma'am.

1 Q. Did you approach the driver of that car?

2 A. We did a felony traffic stop, which means we  
3 instructed the driver to exit the vehicle, from our units.

4 Q. And did the driver do that?

5 A. Yes, ma'am, he did.

6 Q. Do you see him in court today?

7 A. Yes, ma'am, I do.

8 Q. Which person is he?

9 A. Jedidiah Murphy.

10 Q. Okay. When he got out of the car, what did you do  
11 next, Sergeant?

12 A. Placed him in custody and put him in the squad car.

13 Q. Did you determine whether or not he had a drivers  
14 license?

15 A. Subsequent computer search found that he had a  
16 drivers license, but it was suspended.

17 Q. Okay. Did you file two charges on him?

18 A. Yes, ma'am, I did.

19 Q. What was those?

20 A. Evading arrest with a motor vehicle and driving  
21 while license suspended.

22 Q. Okay. Did you talk to him about a suicide attempt  
23 at all, or did he talk to you about that?

24 A. We gave him his Miranda warning at which time he  
25 advised us he wanted to kill himself and that when he got out



1 of jail, he would try to kill his self.

2 Q. In Kaufman do you have any kind of facilities or  
3 places that you take people for observation at all, or do you  
4 just have to put them in jail there?

5 A. Put them in jail and put them on suicide watch at  
6 first. And if it continues, we have a place over in Terrell  
7 where we take them to for evaluations.

8 Q. Who called you to tell you about this?

9 A. I'm not really sure. I think the call came in  
10 through dispatch from his mother.

11 Q. Hope Abbott?

12 A. Yes, ma'am.

13 MS. LITTLE: That's all I have. Thank you.

14 Cross-Examination

15 By Mr. Davis:

16 Q. Sergeant Wood, while the defendant was in your  
17 presence, he make any attempt to harm himself?

18 A. No, sir.

19 Q. Did he have any weapons on him?

20 A. No, sir.

21 Q. Have any weapons in the vehicle?

22 A. No, sir.

23 Q. You say that you would initially take them to the  
24 jail, then if you felt there was a further need for  
25 observation, there's a place in Terrell that you can take

1 them to?

2 A. Yes, sir, if they -- if they attempted it in the  
3 jail, there's a place in Terrell that we take them for  
4 evaluation.

5 Q. Did you ever take him to Terrell for --

6 A. No, sir.

7 Q. -- observation?

8 A. No, sir, I did not.

9 Q. So I take it then he made no efforts to take his  
10 life while he was --

11 A. No, sir.

12 Q. -- in the jail with you, right?

13 A. No, sir.

14 Q. Do you know how many other times this man has  
15 attempted or threatened suicide?

16 A. No, sir, I don't.

17 MR. DAVIS: Thank you, sir.

18 That's all I have, Your Honor.

19 MS. LITTLE: Nothing further.

20 THE COURT: May this witness be excused,  
21 subject to recall?

22 MS. LITTLE: Yes.

23 MR. DAVIS: No objections.

24 THE COURT: Defense have any objection?

25 MS. BALIDO: No objection, Judge.

1 THE COURT: Thank you. You are excused.

2 Defense may continue.

3 MS. LITTLE: Call Gary Wayne Kines.

4 THE COURT: Ladies and gentlemen, this witness  
5 has been sworn in. He's under oath.

6 Have a seat to my left, please.

7 GARY KINES

8 was called as a witness by the Defendant and, after having  
9 been first duly sworn, testified as follows:

10 Direct Examination

11 By Ms. Little:

12 Q. Would you state your name, please, sir?

13 A. Gary Kines.

14 Q. Mr. Kines, you're here today because we requested  
15 that you come down; is that right?

16 A. Yes.

17 Q. And you're here because you're related to Jim  
18 Murphy; is that correct?

19 A. Yes, it is.

20 Q. When you came down here originally, did you know  
21 that you were going to be related to Jim Murphy?

22 A. No.

23 Q. What were the circumstances that you came down here?

24 A. I came down here to be a potential juror.

25 Q. On this case?

1 A. Yes.

2 Q. And in the course of your being talked to by the  
3 lawyers, did you discover that you were related to Jim  
4 Murphy?

5 A. Yes, ma'am.

6 Q. And were you afforded an opportunity to talk to him?

7 A. Yes.

8 Q. Did you have an emotional reaction to that?

9 A. Yeah, it was a shock.

10 Q. Did you know when he was living, Donnie Kines, Jim's  
11 daddy?

12 A. No.

13 Q. Did you know that he -- did you not have any  
14 relationship with him about drinking?

15 A. Oh, you talking about Donnie?

16 Q. Yeah, Donnie.

17 A. Yes, yes.

18 Q. Okay. Let's be clear who Donnie is.

19 A. He's my cousin.

20 Q. Okay. And he's Jim daddy's?

21 A. Correct.

22 Q. You've learned that since then, right?

23 A. Yes.

24 Q. Do you know anything about his drinking habits?

25 A. Donnie's?

1 Q. Yes.

2 A. Yes, I picked him up on two occasions from the Palms  
3 Bar down off Military Parkway in Dallas and took him home.

4 Q. Were you living in Dallas at that time?

5 A. Yes, ma'am.

6 Q. And why was it necessary for to you take him home?

7 A. He was unable to get home.

8 Q. Drunk as a skunk?

9 A. Yes.

10 Q. Were you also aware of him getting in fights when he  
11 was drinking?

12 A. Yes. On one occasion he -- he was pretty well beat  
13 up.

14 Q. Okay. Where did that happen, if you recall?

15 A. At the Palms.

16 Q. Is the Palm one of those places they call a pressure  
17 cooker?

18 A. Yes, it can be.

19 Q. Okay. What is that? What is a pressure cooker?

20 A. Its just a bar where a lot of things -- very  
21 volatile type situations.

22 Q. Is that a place that's called --

23 A. Loud, rowdy.

24 Q. Huh?

25 A. Loud and rowdy.

1 Q. Loud and rowdy?

2 A. Uh-huh.

3 Q. Are they called pressure cookers because supposedly  
4 wives go there during the day and cook dinner at the last  
5 minute at night in a pressure cooker; is that where that  
6 comes from?

7 A. Yes.

8 Q. That place isn't open anymore, is it?

9 A. No.

10 Q. And you wound up not on this jury?

11 A. Right.

12 MS. LITTLE: That's all I have. Thank you.

13 MR. DAVIS: Nothing further.

14 THE COURT: Thank you, sir. You may step  
15 down. You may remain in the courtroom or be excused if you  
16 wish.

17 MS. LITTLE: Call Tonya Thorp.

18 THE COURT: Raise your right hand, please,  
19 ma'am.

20 (Witness sworn.)

21 THE COURT: Have a seat to my left, please.

22 MS. LITTLE: May I proceed?

23 THE COURT: You may.

24 TONYA THORP

25 was called as a witness by the Defendant and, after having

1     been first duly sworn, testified as follows:

2                             Direct Examination

3     By Ms. Little:

4             Q.     State your name.

5             A.     Tonya Thorp.

6             Q.     Tonya, are you Jim Murphy's sister?

7             A.     Yes, I am.

8             Q.     The jury has already heard a good about deal your  
9     family background. I'd like to ask you what you remember  
10    about your early childhood.

11            A.     It wasn't very good.

12            Q.     Are you one of the oldest kids?

13            A.     I was the oldest.

14            Q.     Okay. And your mother is who?

15            A.     Hope Abbott.

16            Q.     And your dad is?

17            A.     My real dad I've never met. The only dad that I  
18    remember was Donnie.

19            Q.     And do you have other siblings that were also not  
20    Donnie's that were older that predated your mother's  
21    relationship with Donnie?

22            A.     Yes.

23            Q.     And who are they?

24            A.     Tamera and Bob.

25            Q.     Where are they now?

1 A. Tamera lives in Houston, and Bob is in Kaufman.

2 Q. Are they doing okay?

3 A. Yes.

4 Q. Do you have any connection to them?

5 A. Yes, I do.

6 Q. Holidays and things like that?

7 A. Uh-huh.

8 Q. Once your mother your -- married Donnie, how old  
9 were you at that time?

10 A. Five.

11 Q. And how long did you live with your mother and  
12 Donnie?

13 A. Until about 13, I guess, 7th grade.

14 Q. Were other children born?

15 A. Yes.

16 Q. And who was born after you -- or your mother married  
17 Donnie?

18 A. Donnie and then --

19 Q. Donnie Jr. and Jim who is here in court?

20 A. Yes, and Holly.

21 Q. And Holly. Where is Holly now?

22 A. Holly is in Lancaster, I believe.

23 Q. Do you have any connection to her?

24 A. No, not really.

25 Q. Do you know how things have turned out for her?



1 A. Not so good.

2 Q. When you were a little girl, Tonya, what kind of  
3 relationship did you have with Donnie Sr.?

4 A. Not much of one. I didn't care for him.

5 Q. Was that largely due with the way he treated your  
6 mother?

7 A. Yes.

8 Q. And was this both before and after Donnie and Jim  
9 were born?

10 A. Yes.

11 Q. Do you have any memories of specific things that  
12 Donnie did to your mother?

13 A. Yes, I do.

14 Q. Would you tell the jury about some of those?

15 A. He beat her. He beat her very bad.

16 Q. Were you a witness to that?

17 A. Yes.

18 Q. Was there a time when you observed him smash her  
19 head against the wall?

20 A. Yes, there was.

21 Q. Do you know about when that was?

22 A. I was in the 6th grade. I remember the house.

23 Q. And where were you living at that time?

24 A. In Kemp.

25 Q. Kemp, Texas?

1 A. Yes.

2 Q. Do you know what caused that to happen?

3 A. Alcohol.

4 Q. So Donnie Sr. was a serious alcoholic?

5 A. Very much so.

6 Q. Do you remember any specifics about that argument  
7 that caused him to smash your mother's head against the wall?

8 A. No, no specifics on the argument. I -- it really  
9 didn't take much of anything for him to go off.

10 Q. And what was the result of that injury to your  
11 mother? Did she have to be hospitalized?

12 A. No, she didn't, but I had to pull splinters out of  
13 her head.

14 Q. Where did the splinters come from?

15 A. The wall, the paneled wall.

16 Q. Were Donnie and Jim around then, little Donnie?

17 A. Yes.

18 Q. Did they witness any of this, or do you recall?

19 A. I don't -- I don't know. I'm sure they did. I  
20 just -- I know I was there.

21 Q. Okay. Was there another occasion where your  
22 mother's teeth were knocked out?

23 A. She has had teeth knocked out.

24 Q. And who did that?

25 A. Donnie.

1 Q. Did you witness that?

2 A. I don't -- I don't remember it -- I just -- I don't  
3 know that I was right there then.

4 Q. Do you remember how Donnie Sr. treated little Donnie  
5 and Jim?

6 A. It was very strict, very -- I mean very -- the  
7 slightest thing would just set him off.

8 Q. At some point did your mother decide she couldn't  
9 stay with him anymore?

10 A. Yes.

11 Q. And how many kids were there in the family at that  
12 time?

13 A. Six.

14 Q. You three from her previous life, and Donnie and Jim  
15 and Holly?

16 A. Yes.

17 Q. Did she leave him or did he go or how did that  
18 happen?

19 A. She -- I believe she left. And then we were all  
20 with her for a little while.

21 Q. And then where did you go?

22 A. To my grandparents. Donnie's parents.

23 Q. Maggie and Ed?

24 A. Yes.

25 Q. Did they live close by?

1 A. Yes.

2 Q. And did they try to take care of y'all?

3 A. Yes.

4 Q. They were getting old and not well though; is that  
5 right?

6 A. Correct.

7 Q. Did you all wind up at Buckner's Orphanage?

8 A. Yes. I refused and agreed to a weekend and said if  
9 I didn't like it, I wouldn't stay.

10 Q. And so where did you go because of that?

11 A. With my Aunt Pam.

12 Q. Pam Sherman?

13 A. Uh-huh.

14 Q. How long did you stay with her, Tonya?

15 A. Several months. It wasn't a full year.

16 Q. And then did your mom come get you again?

17 A. Yes.

18 Q. And did she get anybody besides you?

19 A. She also got Tamera and Bob.

20 Q. And Bob?

21 A. And Bob.

22 Q. Okay. What about Donnie and Jim and Holly?

23 A. She did not get them. I don't know at that time if  
24 it was because they were already adopted by the Tolars and  
25 the Veeches or if they were still in Buckner. I don't

1 remember.

2 Q. Okay. Did you loose contact with the younger  
3 siblings after that?

4 A. Yes. Yes.

5 Q. Had you done a lot of the care taking for those  
6 kids?

7 A. Yes, I did.

8 Q. When you were with your mother and Donnie Sr.?

9 A. Yes.

10 Q. Do you remember when Donnie Sr. died?

11 A. Vaguely.

12 Q. Was your mother already gone from that relationship?

13 A. Yes.

14 Q. And when is the next time that you ever saw Jim  
15 Murphy who was your brother Jim Ed Kines?

16 A. At my wedding.

17 Q. How many times have you been married, Tonya?

18 A. Twice.

19 Q. And who were you marrying at your wedding where you  
20 saw Jim again?

21 A. Randy Thorp.

22 Q. How long ago was that?

23 A. Almost 11 years.

24 Q. And how did it come about that y'all all were able  
25 to get together again?

1       A.    We all just somehow got -- they got in contact with  
2 mom, and we just all got back together. And it just so  
3 happened that my wedding was coming up, and I invited all of  
4 them.

5       Q.    And which of your siblings came to the wedding and  
6 Jim's siblings?

7       A.    All of them.

8       Q.    Where did you marry?

9       A.    In Caddo Mills.

10      Q.    Here's a Kleenex right here if you need one.

11      A.    Thank you. I got married at Caddo Mills, Texas, in  
12 the church there. Had the reception out at my husband's or  
13 ex-husband's aunt and uncle's.

14      Q.    So that was sort of a reunion for y'all and a  
15 relationship began again?

16      A.    Yes.

17      Q.    After all those years?

18      A.    Yes.

19      Q.    At that time you didn't know anything about what had  
20 happened to Donnie and Jim, did you?

21      A.    No.

22      Q.    And Holly, I guess, for that matter?

23      A.    No.

24      Q.    Did you then develop a relationship with Jim and  
25 Donnie?

1 A. Yes.

2 Q. And how did you manage that?

3 A. We just all came back together and were very happy  
4 about it and stayed in contact.

5 Q. Did you have holidays together and that sort of  
6 thing?

7 A. Yes, ma'am.

8 Q. And do you know Jim's girlfriend, Chelsea?

9 A. Yes, ma'am.

10 Q. Who would you see more often, Donnie or Jim?

11 A. Jim.

12 Q. In fact, did Jim stay with you on occasion?

13 A. Yes, he did.

14 Q. About how many different times did he do that?

15 A. I believe three.

16 Q. Do you know some approximate times when that might  
17 have been?

18 A. No, ma'am.

19 Q. How about the most recent one? Was that in the fall  
20 of last year?

21 A. Yes.

22 Q. Did he come and stay with you for a month or so  
23 before the beginning of October of last year 2000?

24 A. Yes.

25 Q. At that time were you in the process of getting a

1 divorce from Randy Thorp?

2 A. Yes, I was.

3 Q. Where were you living?

4 A. In Richardson.

5 Q. Was that a house that you had with Randy and your  
6 children?

7 A. Yes.

8 Q. What children do you have, Tonya?

9 A. I have Ashley and Miranda.

10 Q. And how old are they?

11 A. Ashley will be 14 next month, and Miranda will be 7  
12 in September.

13 Q. When Jim came to stay with you, he was not working  
14 at that time; is that correct?

15 A. He was not.

16 Q. And why did he come and stay with you?

17 A. Him and Chelsea were having some problems.

18 Q. He and Chelsea were having problems?

19 A. Yes.

20 Q. And they have been living where, do you know?

21 A. Wills Point.

22 Q. Wills Point?

23 A. Yes.

24 Q. Okay. While he stayed with you, did he participate  
25 and contribute to your family life in any way?



1 A. Yes, he did.

2 Q. What did he do?

3 A. At that time I was working a lot of hours and worked  
4 late and I could call him up and say, hey, I'm going to work  
5 late, can you watch the kids and feed them, and he did. He  
6 would have dinner cooked and the house picked up when I got  
7 home.

8 Q. So he helped you throughout that month and a half or  
9 so prior to this case that we're here about today?

10 A. Very much.

11 Q. Were you aware of any problems that he was having at  
12 that time?

13 A. No, ma'am.

14 Q. Had you known -- been confided in about any of those  
15 problems before the visit that was right before this case?

16 A. I knew very little of it. And just didn't talk  
17 about it very much, chose not to.

18 Q. Had you talked with him over the years about his  
19 various placements after he left y'all?

20 A. I knew where he was placed.

21 Q. Okay. So basically you had sort of someone to take  
22 care of your kids for you while you were working when you  
23 were trying to get a divorce and there was a lot of upheaval  
24 in your life?

25 A. Yes.

1 Q. And in fact you talked to the police early on when  
2 this case happened, didn't you?

3 A. Yes, ma'am.

4 Q. And so did your mother?

5 A. Yes.

6 Q. Were you aware that Jim had a drinking problem?

7 A. Yes.

8 Q. How long had you known about that?

9 A. You know, I don't know. I knew that he had been in  
10 AA and with Randy Crow's help tried to overcome it.

11 Q. Did you ever see him intoxicated that you know of?

12 A. One time, one time.

13 Q. So for the most part when he was around you and  
14 close family members, other than Chelsea, he -- he didn't  
15 appear to drink to you?

16 A. No, never in my house.

17 Q. Okay. Did you see him after he was arrested?

18 A. Yes.

19 Q. How did he appear to you?

20 A. Very upset. He wouldn't look at me. Just kept his  
21 head down. Just cried. He was very upset.

22 Q. And you've talked to the police on a number of  
23 occasions?

24 A. Yes, I did.

25 Q. And gave them any information that you had?

1 A. Yes.

2 Q. As far as you know, Jim gave whatever information he  
3 had?

4 A. Yes.

5 Q. And you're here to support him today?

6 A. Yes, I am.

7 Q. You know this case is a very bad case?

8 A. Yes.

9 Q. Is there anything you can tell this jury that would  
10 see -- so they can see Jim as being more than the sum of this  
11 case?

12 A. He is so much more than this. I don't know what  
13 happened. This is not my brother. This was not the sweet  
14 brother that I love. I don't know what happened.

15 Q. In the time that you've been back in a relationship  
16 with him since your wedding, have you had an opportunity to  
17 discover if he gets his feelings hurt, if he feels bad about  
18 things when he does the wrong thing? Do you know anything  
19 about that?

20 A. No. He pretty much keeps everything to himself.

21 Q. But he's helpful to you and your kids?

22 A. Very much, and my children love him.

23 Q. And he has a relationship with his mother again?

24 A. Yes.

25 Q. Were you aware that he had been in these various

1 hospitals?

2 A. Somewhat. I recall -- Glen Oaks or Glen something  
3 maybe in Greenville. But I couldn't tell you for how long.  
4 And I know that he had sought help awhile back from Terrell  
5 State Hospital and was turned away.

6 Q. Okay. So somewhere along there you became aware  
7 that he was a miserable person --

8 A. Yes, ma'am.

9 Q. -- not coping with whatever was going on with him?

10 A. Yes.

11 Q. Were you aware of any suicide attempts?

12 A. Yes, I was.

13 Q. What do you know about that, Tonya?

14 A. I knew that he took some -- some pills and ended up  
15 in the hospital. As soon as I found out, I drove to Kaufman  
16 to the hospital and pretty much --

17 Q. Do you know Chelsea?

18 A. Yes.

19 Q. And have you -- have y'all socialized, you and  
20 Chelsea and Jim?

21 A. Yes.

22 Q. And you know her children?

23 A. Yes.

24 Q. What have you observed about Jim's relationship with  
25 that family unit and with those kids?

1 A. He's a good daddy. And Jim and Chelsea have always  
2 gotten along in front of me.

3 Q. In front of you they have?

4 A. Yes, ma'am.

5 Q. And he adores those girls, doesn't he?

6 A. Very much so.

7 Q. Did your father ever make any kind of pass at you,  
8 Tonya?

9 A. Yes, he did.

10 Q. It didn't actually amount to anything full scale,  
11 did it?

12 A. No.

13 MS. LITTLE: I'll pass this witness.

14 Cross-Examination

15 By Mr. Davis:

16 Q. Ms. Thorp, you just let me know if you need to take  
17 a break. Okay?

18 A. Okay.

19 Q. Concerning what happened with -- with your father  
20 and the defendant, your father never did abuse your brother  
21 Jim, did he?

22 A. They got their butts spanked. I wouldn't say  
23 abused. I don't know everything that went on.

24 Q. So as far as you know, he was never physically or  
25 sexually abused by your father, was he?

1 A. No, not that I'm aware.

2 Q. When you came back in contact with him, that was 11  
3 years ago; is that right?

4 A. Uh-huh.

5 Q. So your brother would have been, what, about 14  
6 years old, 15 years old, something like that?

7 A. Something like that, yeah.

8 Q. And since that time, since he's been 14 or 15 then,  
9 you and other members of the family have had a relationship  
10 with him, haven't you?

11 A. Yes.

12 Q. Would it be fair to say that you and other members  
13 of the family have tried to be there for him, tried to help  
14 him?

15 A. Yes.

16 Q. If your brother at any time had come to you and  
17 said, you know, Tonya, I need some help, would you help me  
18 with drugs, alcohol, my anger, what's happening with Chelsea,  
19 would you have turned your back on your brother?

20 A. No.

21 Q. With regards to when he took the pills and  
22 eventually went into Oak Haven, you know, don't you, that he  
23 told the people down there that he did that just to get  
24 attention? Do you know that?

25 A. No, I didn't.

1 Q. And as far as you know, your brother never did drink  
2 while he was there at your house, did he?

3 A. No, not that I was aware.

4 MR. DAVIS: That's all I have. Thank you.

5 Redirect Examination

6 By Ms. Little:

7 Q. Tonya, once all of this trouble began in October,  
8 did you go home after you thought something -- that Jim might  
9 be involved in this some way?

10 A. Yes, I did.

11 Q. What did you find when you got there?

12 A. I found a suicide letter on the table.

13 Q. Do you know what's ever happened to that suicide  
14 note?

15 A. I gave it to Matt Myers at the Garland police.

16 Q. So the Garland police have that note?

17 A. Yes.

18 Q. Do you recall what it said?

19 A. I can't remember everything. Just said that he was  
20 upset and distraught and not happy and wanted to see his kids  
21 and he was going to kill himself.

22 Q. Did you find any evidence in your house -- was  
23 anything unusual in the garage when you went in there?

24 A. Yes, there was.

25 Q. What was in there? What did it look like out there?

1           A.    I found some hoses, like my vacuum cleaner  
2 attachment hoses and my dry vac from the garage. And I don't  
3 know -- like a -- a hose from a car or something that were  
4 out there attached together.

5           Q.    Do you know if pictures were taken of those before  
6 they were removed from your garage?

7           A.    I don't remember if they took pictures or not  
8 before.

9           Q.    Did you ever become aware that -- did you keep  
10 liquor in your house, Tonya?

11          A.    Yes, I did.

12          Q.    Are you much of a drinker?

13          A.    No. Socially.

14          Q.    Okay. So about how often would somebody go in and  
15 have a drink at your house?

16          A.    Not very often.

17          Q.    Did you have some bottles of liquor in your house?

18          A.    I did.

19          Q.    At some point did you go check them to see what  
20 was -- if you had liquor or not?

21          A.    Actually I was cleaning my bar. There was glass and  
22 it was getting dusty. I was just taking the bottles and the  
23 glasses off and washing them. And when I went to get the  
24 bottles, they were -- they were empty.

25          Q.    Do you know how long that was after this October



1 4th?

2 A. I would say a few weeks.

3 Q. A few weeks?

4 A. Yeah, two or three weeks, something like that.

5 MS. LITTLE: I'll pass the witness.

6 Recross-Examination

7 By Mr. Davis:

8 Q. Tonya, do you remember the Garland Police Department  
9 specifically asking you whether any liquor was missing from  
10 your house?

11 A. No, I do not.

12 Q. And do you remember actually telling the Garland  
13 Police Department shortly after this happened that you  
14 couldn't tell whether anything was missing from your house?

15 A. No, I don't remember that.

16 Q. Do you remember being asked specifically by the  
17 Garland Police Department to look for a missing or an empty  
18 champagne bottle?

19 A. Maybe some champagne. I don't -- I don't remember.  
20 I know I didn't look up at the liquor on the bar. It never  
21 crossed my mind. I mean, it was up there for -- for so long.

22 Q. And so when the Garland police asked to you do that  
23 for them, you came back and told them that you couldn't tell  
24 whether anything was missing from your house liquor wise,  
25 didn't you?

1 A. I don't recall what I said to them.

2 Q. As far as what you found in your garage, you don't  
3 know whether your brother really used those in any way or  
4 not, do you?

5 A. I don't know if he used them or not, no, but I know  
6 they were put together.

7 Q. Has he told you what he did to Ms. Cunningham?

8 A. No, I don't -- I mean, I know that he said it was an  
9 accident.

10 Q. Did he tell you why he took her ATM card?

11 A. No.

12 Q. Less than hour after he abducted her and tried to  
13 use it to obtain money?

14 A. No.

15 Q. Did he tell you why he tried to use the same card  
16 down on Harry Hines later that day?

17 A. No.

18 MR. DAVIS: Thank you. That's all I have.

19 Further Redirect Examination

20 By Ms. Little:

21 Q. And he didn't tell you, I guess, why he put his own  
22 name on every one of those signed cards?

23 A. He did not.

24 MS. LITTLE: That's all I have. Thank you.

25 MR. DAVIS: Nothing further.

1 THE COURT: You may step down, ma'am.

2 Defense may continue.

3 MS. LITTLE: May she be excused?

4 MR. DAVIS: No objection.

5 THE COURT: You may be excused. Remain in the  
6 courtroom or be excused as you wish, ma'am.

7 THE WITNESS: Thank you.

8 MS. LITTLE: Hope Abbott.

9 THE COURT: Ask you to raise your right hand,  
10 please, ma'am.

11 (Witness sworn.)

12 THE COURT: Have a seat to my left, please,  
13 ma'am.

14 HOPE ABBOTT

15 was called as a witness by the Defendant and, after having  
16 been first duly sworn, testified as follows:

17 Direct Examination

18 By Ms. Little:

19 Q. Would you state your name, please, ma'am?

20 A. My name is Hope Abbott.

21 Q. Ms. Abbott, are you Jim Murphy's mother?

22 A. Yes, I am.

23 Q. And you're Tonya's mother as well; is that correct?

24 A. I'm sorry?

25 Q. You're Tonya's mother as well?

1 A. I am.

2 Q. How many children do you have altogether?

3 A. I have six children.

4 Q. Were you married to Donnie -- Donnie Kines?

5 A. Yes, ma'am.

6 Q. How long were you married to him?

7 A. Donnie and I were married up until the day he died.

8 We never were divorced.

9 Q. Did you stay with him, though?

10 A. No, ma'am, I did not.

11 Q. How long were you together before you left him?

12 A. Approximately eight years.

13 Q. And how long after -- after that was it that he  
14 died?

15 A. (No response.)

16 Q. If you know?

17 A. About three years later. Two to three years later I  
18 would say, as best I can recall, I'm sorry.

19 Q. Okay. Did you -- were you in a position where you  
20 weren't able to keep all of your children?

21 A. Yes, ma'am.

22 Q. Did you have some help from Donnie Sr.'s parents for  
23 a while?

24 A. Off and on as much as they possibly could. They  
25 were -- I had no family. I was adopted, an only child. My

1 parents had passed away many years before. There was no  
2 family. In all reality they helped as much as they possibly  
3 could. They were not wealthy. Pam Sherman stepped in and  
4 helped trying to get the children placed due to the fact that  
5 I had had a stroke and was not able to care for everyone.  
6 And Donnie signed the papers as well.

7 Q. Okay.

8 A. For the adoption to take place.

9 Q. Were you able to keep up with your kids as they grew  
10 up?

11 A. In the beginning we were told that we would be able  
12 to have regular visitation, that they would be able to see  
13 us, they would have contact with their siblings. And after  
14 the papers were signed, this never took place. It never  
15 happened. In fact, I was told that if I made contact with  
16 them at all, that Mr. and Mrs. Kines would not be able to see  
17 the children at all.

18 Q. Okay.

19 A. So, no, we were not. When Jim Ed went to the  
20 Murphys and Donnie ended up going to Mr. Looney, later on,  
21 after they left their first adoptive home, then I got to  
22 speak with Jim Ed. And of course Garth made sure that Donnie  
23 and we got to keep in contact with him at that time.

24 Q. Okay. During your marriage to Donnie Kines, Sr.,  
25 was that a fairly rocky relationship?

1 A. Very brutal.

2 Q. And you were not a drinker; is that correct?

3 A. Oh, no, ma'am, not at all.

4 Q. But he was?

5 A. Yes, ma'am.

6 Q. And his father, who's called Uncle Ed, drank a lot,  
7 also, did he not?

8 A. Yes, ma'am.

9 Q. But he was a functional alcoholic; would that be  
10 fair to say?

11 A. As far as I know, he never missed a days work. And  
12 Donnie was a running alcoholic. There might be a morning  
13 that he would get up, appear to be fine, be cheerful, say  
14 I'll see you this afternoon, and he'd be gone for two to  
15 three weeks. We'd never know where he was.

16 Q. Were you working at that time?

17 A. No, ma'am.

18 Q. What decade was this in?

19 A. The 70's.

20 Q. The 70's, and early '80's or 70's?

21 A. 70's, yes, ma'am.

22 Q. Was he physically abusive to you?

23 A. Yes, ma'am.

24 Q. What kind --

25 A. If you'll notice, I have no teeth.

1 Q. Do you know about when that happened?

2 A. It started almost immediately after we married. As  
3 I say, I was an only child, an adopted child. And my mother  
4 and daddy always told me that I was the best thing since  
5 sliced bread and I had very long hair. I had my teeth  
6 cosmetically done and he went after everything he could take  
7 from me.

8 Q. What kind of things would stir him up?

9 A. It really -- a variety. It didn't really make any  
10 difference. I would get told if we looked at pictures that I  
11 lived in the past. If I got a whatnot down that belonged to  
12 my mother or things like this, it would become a  
13 confrontational situation because he always thought that I  
14 wanted to be better and -- which I never understood, but  
15 that's what he felt, or I thought at that time he felt.

16 Q. Did he hit on you on a regular basis?

17 A. Yes, ma'am.

18 Q. And was that from the time that you married him just  
19 about?

20 A. Yes, ma'am.

21 Q. Did that continue after Donnie and Jim and Holly  
22 were born?

23 A. Oh, yes, ma'am. It got worse because then if he  
24 couldn't get me to fight, he would go after them.

25 Q. Were you working originally when you were married to

1 Donnie Sr.?

2 A. Yeah, I have worked. And that was something that he  
3 did not approve of. I was not allowed to. There were a lot  
4 of things that Donnie had strange ideas about. One was a  
5 woman working. He felt that it was a man's place. He  
6 wouldn't let me take birth control pills. He felt that any  
7 woman who did that was morally going out to get away with  
8 what she could get away with.

9 Q. A cheap floozie sort of woman?

10 A. Exactly.

11 Q. Okay.

12 A. And yet I never went to the clubs with him. I never  
13 went to the bars with him. He always went on his own and --

14 Q. You were in the nursing field however though; is  
15 that correct?

16 A. Yes, correct.

17 Q. What kind of work did he do?

18 A. He was construction, heavy equipment operator.

19 Q. And what kinds of things would he do to the  
20 children?

21 A. He hollered, screamed, threatened, could be verbally  
22 abusive. He never got a chance to be really physical because  
23 like I said, normally if that started, I would throw myself  
24 right in between him and the babies and we'd go at it.

25 Q. What made you finally decide to go?



1           A.    Well, when I got beat down into the floor, I have --  
2   I had a depression in the back of my skull.  You get your  
3   teeth all knocked out.  You end up having to have surgery on  
4   your mouth to remove the majority of bone.  I have  
5   one-quarter inch left for which now I'll have to have  
6   implants done.  I can no longer wear a plate.

7           Q.    Did he do that with his hands, or how did he hit  
8   you?

9           A.    Fist.

10          Q.    And he threw you into the wall one time, too; is  
11   that correct?

12          A.    Yes, he did and then beat me into the floor.

13          Q.    Is that when Tonya had to pull the splinters out of  
14   your head?

15          A.    Yes, ma'am.  That is the crowning blow is when you  
16   catch your little 8-year-old on his back screaming, get your  
17   hands off my mother or I'll kill.  You know, you become, in  
18   my opinion, as dysfunctional as the person that you live with  
19   without really realizing it until something like that occurs  
20   and then you see the damage that it does to everyone.

21          Q.    So you got out of the situation, but your kids had  
22   to go elsewhere, most of them did?

23          A.    I hung on for a long time.  We moved to Terrell, and  
24   I went to work for the State.  And I was working two jobs.  
25   And I went to work at 6:30 in the morning, got off at 2:30 in

1 the afternoon, reported for duty at the State hospital at a  
2 quarter of 3:00 and worked until 11:15, and I ended up with a  
3 stroke.

4 Q. So then things had to change after that?

5 A. Yes, I was in the hospital for three weeks.

6 Q. During the time that you were married to Donnie,  
7 this is before we had all these family violence laws and  
8 everything; is that right?

9 A. Oh, yes.

10 Q. Were the police called to your house?

11 A. Many times.

12 Q. Did Donnie ever get arrested?

13 A. No, ma'am. It was considered civil disturbance.

14 Basically what I got told was that I was married to him, it  
15 was a civil disturbance, so what they were actually telling  
16 me is if he decided to let me have it, there wasn't anything  
17 they could do about it, unless they saw it or unless he hurt  
18 me really bad.

19 Q. Well, what about the time you got splinters in your  
20 head and knocked your teeth out? Did the police come out  
21 those times?

22 A. Yes, ma'am.

23 Q. And nothing was done?

24 A. No, ma'am. The only person I can honestly say that  
25 finally stepped up to the plate, we had a Sheriff in Kaufman,

1 and of course it was just something that was said. I don't  
2 know if it was ever documented. And after he had gotten me  
3 really good with the belt and with his first, Roy Brockaway,  
4 who was the Sheriff, told him that, you know, that if he did  
5 it again, that if I shot him, he was going to help me -- he  
6 would help me.

7 THE REPORTER: Could you say his last name  
8 again, please?

9 THE WITNESS: Brockaway, B-r-o-c-k-a-w-a-y.

10 A. Because it was terrible. I mean, it was just an  
11 awful thing. And the kids would be screaming, and it was  
12 awful.

13 Q. (By Ms. Little) Now, Donnie's parents did help with  
14 the kids for a little while, didn't they?

15 A. Yes, they loved them very much and -- yeah, they  
16 tried. But as the old saying goes, blood is thicker than  
17 water. So when it came to me being there or him being there,  
18 naturally, you know, they're not going to throw their son  
19 out.

20 Q. Uh-huh.

21 A. But I really don't think that they would have ever  
22 allowed him to truly abuse them if his daddy were aware what  
23 was going on.

24 Q. Okay.

25 A. Now, if Margaret was there, I didn't worry about it

1 too much because she was not a drinker. Ed, on the other  
2 hand, was and when he was with us and not completely  
3 oblivious, he wouldn't let him, you know, do anything to the  
4 kids either.

5 Q. Okay. Now, did you lose touch altogether with  
6 Donnie and Jim and Holly for a period of time?

7 A. Yes, I did.

8 Q. Do you recall how long a period of time that might  
9 have been?

10 A. Probably -- I'm going to say Holly about 8 years.  
11 Jim probably about the same. And then we -- we found out  
12 that he had been adopted by the Murphys, and I remember  
13 calling him on one of his birthdays. I think it was his 13th  
14 birthday. And they did allow us to speak to him, for which I  
15 was very grateful. We did not get back in to full contact --  
16 I came into contact with Donnie first. And then Ruth and her  
17 husband were having a lot of trouble with Holly, and she  
18 called.

19 Q. This is the Veeches?

20 A. Yes, ma'am. And she called me and told me that they  
21 just didn't feel they could any longer keep her and do what  
22 needed to be done and did I want to take her back and of  
23 course I said yes.

24 Q. Uh-huh.

25 A. And then when Tonya got married -- well, Jim Ed had

1     come with Donnie to the house one time. I think that's when  
2     he had his foot hurt. And that was the first time I had seen  
3     him in a long time. And we spoke, but didn't push anything.  
4     And then at Tonya's wedding, we just all got together and  
5     were having a good time. And it was like we were never  
6     apart. And after that, he got into some trouble, and I  
7     helped him as much as I could, stood by him. And when he got  
8     out, well, he came to live with me.

9           Q.     And since that time, you've developed your  
10     relationship again?

11          A.     Like -- it was just like we shut one door and opened  
12     another. It was wonderful.

13          Q.     And how old was he by the time that actually  
14     happened, Hope?

15          A.     Okay. He was 18. He came to live with me probably  
16     at 19.

17          Q.     And over the course of this, are you aware that he's  
18     been a troubled person with problems he couldn't seem to get  
19     a handle on?

20          A.     We didn't realize that it was as deep seeded as  
21     perhaps it was. I know that he had told me after he had  
22     gotten into some trouble and tried to commit suicide, that he  
23     had sought help several times at Terrell and was turned away.  
24     So when he was released from Kaufman Hospital, the Sheriff's  
25     Department went with me to Terrell in transport to take him.

1 And I was there when they did turn him away, even though we  
2 had an order for admission. They felt it was an alcohol and  
3 drug problem, not a psychological or psychiatric. So we went  
4 back home that night. And the next day we went to Canton,  
5 and they helped us at -- I can't even think of the name of  
6 the place. I'm so sorry.

7 Q. It was a place in Canton, though?

8 A. Yes, ma'am, outreach clinic type thing, and they  
9 helped us find a drug and alcohol program that we could get  
10 him into.

11 Q. And do you know about when that was?

12 A. I believe, if I'm not mistaken, that was in  
13 October -- September, October.

14 Q. Of what year?

15 A. '98.

16 Q. Okay. Then in '99 did you -- did he get arrested --

17 A. Yes, ma'am.

18 Q. -- on a suicide call in Kaufman?

19 A. Yes, ma'am.

20 Q. Did you try to get him into some kind of treatment  
21 for that?

22 A. We -- he ended up going -- they took him to jail,  
23 and I went ahead and bonded him out the next day. And then  
24 he -- I can't remember if it was that time or the next. I've  
25 got all the dates written down. It just all runs together.

1 I'm so sorry. He went to Greenville, and they treated him in  
2 Greenville. And then from Greenville, he went to Timberlawn.

3 Q. Okay.

4 A. And he did fairly well. The medication, of course,  
5 was very strong. And I think it scared him a little bit that  
6 it had the control that it had. But he seemed to have done  
7 well.

8 Q. Okay.

9 A. And then he went back home to Chelsea after a time,  
10 and everything seemed to be going pretty good. And then of  
11 course, you know, typical young folks, they --

12 Q. Fussed --

13 A. Fussed, yeah -- you know, you can't blame one or the  
14 other on any of that. It was just something that happened.  
15 And he ended up coming to his sister's.

16 Q. And did he help her around the house?

17 A. Absolutely. He was wonderful. His nieces love him  
18 very much. The kids that were friends of Ashley's who is 13  
19 years old would come by and see him all the time. He was  
20 absolutely great with them. He's a sweet, kind, lovable  
21 person.

22 Q. That's the Jim you know?

23 A. Yes, ma'am, it certainly is, always has been.

24 Q. Now, you have some health problems right now  
25 yourself; is that correct?

1 A. Yes, ma'am.

2 Q. What is that?

3 A. I've got atherosclerosis. I have got hypertrophy of  
4 the left ventricle, congestive heart failure, GERD.

5 Q. And so we weren't actually sure whether you'd be  
6 able to come today, but you have been able to come; is that  
7 right?

8 A. Uh-huh, you bet.

9 MS. LITTLE: Thank you. That's all I have.  
10 I'll pass the witness.

11 Cross-Examination

12 By Mr. Davis:

13 Q. Ms. Abbott, my name is Greg Davis. I just have a  
14 few questions for you this afternoon. If you need to take a  
15 break at any time, just let me know.

16 A. Thank you, Mr. Davis.

17 Q. Going back to when your son was living with you and  
18 his father, your husband never did beat any of the children  
19 in that home, did he?

20 A. Oh, he whacked them a couple of times, but that's  
21 when we would go at it, Mr. Davis, I'm not going to lie.  
22 Yeah, he did.

23 Q. He did beat them?

24 A. He tried.

25 Q. Okay. Well, I need to know specifically with



1 regards to the defendant, to your son, are you saying that  
2 your husband beat him or not?

3 A. Yes, I am saying that he -- now, when you're using  
4 the term "beat," I mean -- I never allowed him, you know,  
5 very much, because we would jump in there. But, yeah, he hit  
6 him, you bet he did, just like he did the rest of them.

7 Q. Ms. Abbott, do you remember talking with Dr. Mary  
8 Connell about this case?

9 A. Yes, I do.

10 Q. Do you remember Dr. Connell asking you about that  
11 very same subject, about whether your husband ever beat the  
12 children in the home?

13 A. Right.

14 Q. And do you remember telling Dr. Connell during a  
15 telephone interview that when the children were young and  
16 still at home with them, with you and your husband, they were  
17 never beaten?

18 A. When I'm using the term "beaten," I want to make it  
19 perfectly clear, Mr. Davis, without ad-libbing or taking away  
20 from, I need to know your definition of beat, number one.  
21 Number two, he hit the tar out of them. And that's when we  
22 would get into the fight. This is what happens. But, no --  
23 I mean, as far as being able to let him lay into them and  
24 continue it, absolutely not.

25 Q. Ms. Abbott, you yourself were adopted as a child,

1 weren't you?

2 A. I certainly was.

3 Q. If you don't mind my asking, how old were you when  
4 you were adopted?

5 A. I was two weeks old when my mother and dad got me,  
6 six weeks old when I was adopted.

7 Q. With regards to what may have happened in the Tolar  
8 home, is it my understanding that you really had no contact  
9 with -- with your sons Donnie or Jim during the time that  
10 they were living with the Tolars?

11 A. We went over there a couple of times. After that,  
12 it was very strained. We were asked not to.

13 Q. Okay. So as far as what -- what really happened in  
14 that home between the Tolars and your two sons, you really  
15 don't have that much personal knowledge, do you?

16 A. Only what I have been told. And I don't know why  
17 any little boys would want to tell you that.

18 Q. Who -- who told you about what happened at the Tolar  
19 home?

20 A. Donnie and Jim.

21 Q. And when did they tell you?

22 A. Oh, it's been -- it's been awhile back. They were  
23 telling me about that after they left. I didn't know about  
24 what I would consider some of the sexual abuse until much  
25 later on, but I did understand that they were supposed to

1 have been physically abused, psychologically abused,  
2 deprived, and was very angry.

3 Q. All right. How long after they left the Tolar home  
4 did they first tell you that they had been physically or  
5 psychologically abused by the Tolars?

6 A. I heard it first from Donnie when Donnie was at the  
7 boys' home.

8 Q. So that's --

9 A. Pardon me?

10 Q. That's while they're at the Fruitvale Children's  
11 Center, right?

12 A. Yes.

13 Q. When did Jim Ed first tell you he had been  
14 physically abused by the Tolars?

15 A. After -- after he came to live with me, we talked  
16 about that.

17 Q. So it wasn't until age 19?

18 A. Right.

19 Q. And by the time he told you, Ms. Abbott, he was  
20 already on two felony probations out of Van Zandt County,  
21 wasn't he?

22 A. Yes, sir. But never used it for an excuse, Mr.  
23 Davis.

24 Q. And the allegation of sexual abuse that the Tolars,  
25 who told you about that?

1 A. I'm not comfortable discussing that.

2 Q. Was that sometime recently?

3 A. Yes.

4 Q. Within the last -- last few months?

5 A. Yes.

6 Q. Has it been since your son has been charged with  
7 this offense, Ms. Abbott?

8 A. Yes.

9 Q. As I understand then since your son has been  
10 somewhere in the neighborhood of 13 or 14 then, you've had an  
11 ongoing relationship with him, haven't you?

12 A. Not with Jim. With Donnie, yes. As I say, Garth  
13 allowed us to talk to him. I spoke with Jim on the phone.  
14 We did not see him when he was with the Murphys.

15 Q. And he is -- he is how old now?

16 A. Who, Jim?

17 Q. Yes.

18 A. He was born in '75, so he's 25 years old -- will be  
19 26.

20 Q. So since he came to live with you, certainly that's  
21 been around six years ago, as I understand, you've had an  
22 ongoing relationship with him?

23 A. Most assuredly.

24 Q. And, Ms. Abbott, would it be fair to say that --  
25 that you and as far as you know, every other member of your

1 family has done everything they could possibly do for your  
2 son?

3 A. In what capacity?

4 Q. Well, in trying to help him with whatever kind of  
5 problems he's had?

6 A. Of course. I mean, we're a close-knit family.  
7 We'll do whatever we can do to help each other, most  
8 assuredly, as he would help us.

9 Q. As far as -- as far as how your son interacted with  
10 the Murphys, your understanding was that things were pretty  
11 good for your son at the Murphy home, weren't they?

12 A. Yes, sir.

13 Q. Then he had the problems down in Van Zandt County,  
14 right?

15 A. Yes, sir.

16 Q. Had to go to boot camp, I think?

17 A. Yes, sir.

18 Q. And then as I understood your testimony, then when  
19 he came back from boot camp, after he was already placed on  
20 probation is when he started living with you, right?

21 A. Yes, sir.

22 Q. And you stood with him -- stood by him even after he  
23 had legal problems?

24 A. Oh, yes, sir.

25 Q. Thank you, ma'am.

1 THE COURT: Ms. Little, anything further?

2 MS. LITTLE: No, sir.

3 THE COURT: You may step down, ma'am.

4 MR. DAVIS: I'm sorry, I had one additional  
5 question.

6 Q. (By Mr. Davis) Ma'am, your son has -- your son has  
7 written to you from jail, hasn't he?

8 A. Yes, sir.

9 Q. On few or many occasions?

10 A. Many.

11 Q. Do you recall a letter in which your son used code  
12 to communicate with you?

13 A. Yes, I do.

14 Q. And --

15 A. It's not code. It was numbers. It was my  
16 understanding that his mail had been held, and he felt that  
17 in order -- it was just a silly prank. And he wrote down a  
18 series of numbers which, good Lord have mercy, I would have  
19 no way of decoding to start with. And I did not answer it  
20 back that way. We never -- if you'll notice, I mean there  
21 was no response from me.

22 Q. So --

23 A. It was just a silly kid thing.

24 Q. So in order to -- to avoid anyone in the Sheriff's  
25 Department or anyone else from reading his mail then, he used

1 a series of numbers to --

2 A. No.

3 Q. -- in a letter to --

4 A. No, he just did it one time as a stunt. It was --  
5 it was not to -- to impress anyone or to try to put anything  
6 over on anyone. It had absolutely no meaning whatsoever,  
7 other than a bunch of numbers written down on a piece of  
8 paper.

9 MR. DAVIS: Your Honor, I have no further  
10 questions, but at this time I'm going to offer State's  
11 Exhibit Number 148 which are business records of Dr. Richard  
12 Ingram.

13 (State's Exhibit No. 148 offered)

14 MS. LITTLE: No objection.

15 THE COURT: Admitted.

16 (State's Exhibit No. 148 admitted)

17 MR. DAVIS: May I please publish to the jury.

18 THE COURT: You may.

19 MR. DAVIS: Ladies and gentlemen, State's  
20 Exhibit 148 will be the official business records of Dr.  
21 Richard Ingram. These records indicate that Dr. Ingram saw  
22 the defendant, Jedidiah Murphy, on May the 16th of 1985,  
23 which would have been during the time he was living with the  
24 Tolars. His name listed on the records will be Jim Tolar,  
25 that on May the 16th of 1995, that the defendant was seen by

1 Dr. Ingram because he had an insect sting on his left calf at  
2 the time, possible bite -- spider bite, that he was treated  
3 and released that same day.

4 The next entry on the records will indicate that on  
5 July the 14th of 1986, the defendant was seen by Dr. Ingram.  
6 The notation at that point: Patient is here for physical  
7 exam for scout camp. He is in excellent health. However,  
8 he's complaining in his left foot. Eyes, ears, nose, and  
9 throat is clear. Chest is clear. Heart has regular rhythm  
10 without murmur. Abdomen is soft with normal bowel sounds.  
11 Left foot is tender in the mid instep. Impression, flat  
12 feet. Otherwise, healthy child exam. Plan: High insteps in  
13 his shoes. No other restrictions --

14 The final entry by Dr. Ingram will be January the  
15 5th, 1987, which will be after the defendant left the Tolar  
16 home he was placed at the Fruitvale Children's Shelter.  
17 Again, stated 1-5 of '87: This child -- the child has just  
18 been placed in a children's shelter. No evidence of  
19 psychological or physical abuse is noted. Physical exam is  
20 excellent today. Eyes, ears, nose, and throat unremarkable.  
21 Chest is clear. Heart has regular rhythm without murmur.  
22 Abdomen soft with normal bowel sounds and normal gait.  
23 Impression: Well child exam. Plan: No treatment at this  
24 time. And again, that's from Dr. Richard Ingram on January  
25 the 5th of 1987.



1 Thank you, Your Honor.

2 THE COURT: Pass the witness.

3 MS. LITTLE: Nothing further.

4 THE COURT: Mr. Davis, you pass the witness?

5 MR. DAVIS: Yes, I have, Your Honor.

6 MS. LITTLE: Nothing further.

7 THE COURT: Thank you, Ms. Abbott. You may  
8 step down.

9 MS. LITTLE: May we approach the bench?

10 THE COURT: You may.

11 (Counsel approaches the bench.)

12 THE COURT: Ms. King, let the record reflect a  
13 scheduling hearing occurred at the side of the bench, outside  
14 the presence and hearing of the reporter, the defendant, and  
15 the jury.

16 Ladies and gentlemen, it's my understanding that the  
17 defense anticipates their next witness to make a visual  
18 presentation to you which will take a bit of time to set up  
19 so we will stand in recess until tomorrow morning 9:15.  
20 We'll resume the testimony at that time.

21 Please recall the instructions that I have  
22 previously given you.

23 THE BAILIFF: All rise.

24 THE COURT: Have a good evening, 9:15.

25 (Recess of proceedings.)

1 THE COURT: Jury has been excused from the  
2 courtroom at this time.

3 Visitors in the gallery, you may be seated or  
4 excused.

5 MR. DAVIS: Yes, sir, with regards to the  
6 presentation by Dr. -- by Dr. Connell, I believe that I had  
7 objected to the use of the childhood photographs at the last  
8 hearing prior to our recess. Again, I believe the case law  
9 is very clear on this matter, that these types of photographs  
10 are not relevant and probative to any issue in this case.  
11 They are simply there to evoke some sort of sympathetic  
12 response to the defendant. And again, for that reason I  
13 would reurge my objections to Dr. Connell being allowed to  
14 publish the photographs that she has tendered to us  
15 previously.

16 THE COURT: Defense care to further -- you may  
17 proceed.

18 MS. BALIDO: Judge, we would argue that the  
19 Rhodes case upon which the State relies is a -- first, we'd  
20 argue it's a plurality opinion and that the holding in Rhodes  
21 is that childhood photos are not automatically relevant to  
22 the mitigation issue. But looking at the Jackson case, which  
23 is a Texas Court of Criminal Appeals opinion in 1999, found  
24 at 992 Southwest 2d --

25 THE COURT: Just a moment, just a moment.

1 Again, please.

2 MS. BALIDO: The Jackson case, 992 Southwest  
3 2d 469, where they're interpreting both the Rhodes case and  
4 the later Cantu case which also brought up issues about  
5 photographs, the court said we reject the notion that every  
6 single piece of information about a defendant is relevant  
7 without regard to whether that information would tend to show  
8 that a life sentence rather than a death penalty is  
9 warranted. And that the appellant -- that the appellant was  
10 once a child, even a happy one, does not in and of itself to  
11 have a tendency to show whether or not he has a life sentence  
12 rather than a death sentence. That's page 480.

13 But in this specific case, the pictures -- well,  
14 first, we'd argue that the pictures -- the State has opened  
15 the door to pictures and pictures depicting his background  
16 and character based on the picture that the State offered in  
17 regard to the Murphy's house. Looking at that picture, it's  
18 a very happy home, it's got Christmas decorations and such  
19 outside. And the State is going to argue that the fact that  
20 he was brought up in a happy home is aggravating and not  
21 mitigating. And I think that through the cross-examination  
22 that Mr. Davis has done with the witnesses, I think that's  
23 apparent that's what they're going to argue.

24 The pictures that we are trying to go into in regard  
25 to the earlier times and the testimony we expect Ms. -- Dr.

1 Connell to give about how Ms. Tolar told her that the  
2 pictures that they have of Jim and Donnie, the pictures  
3 are -- although she hasn't given her any pictures, there are  
4 no smiles on the children's faces, would go to show how in  
5 this case Mr. Murphy has had very highs in his life and very  
6 lows in his life and therefore would be relevant on the  
7 mitigation question to talk about his character and his  
8 background.

9 Rhodes did not say that relevant childhood pictures  
10 cannot be admitted. We're saying that they are relevant  
11 based on this case and the status of this defendant and his  
12 background and relevant in regard to the evidence that we  
13 have put forth in this case so far and relevant to rebut what  
14 the defense is saying -- I mean, what the State is saying.  
15 And we would say that also under Penry II and the question  
16 that has just been handed down by the Court of -- U.S.  
17 Supreme Court, that mitigation evidence should be given high  
18 priority and placed in front of the jury and that those  
19 considerations must be taken into consideration by the jury.  
20 Then we would argue in this case with this evidence that they  
21 would be relevant.

22 I would also ask the Judge to look at Sandra Day  
23 O'Connor's opinion in Franklin versus Lynaugh where evidence  
24 about the defendant's background and character is relevant  
25 because of the belief long-held in society that the defendant

1 who commits criminal acts that are attributable to a  
2 disadvantaged background or to emotional or mental problems  
3 may be less culpable than defendants who have no such  
4 excuse. And she is the one that wrote Penry II. Those are  
5 her concerns and obviously the concerns of the majority --

6 THE COURT: Are those not cases -- aren't  
7 those two opinions not case specific, period?

8 MS. BALIDO: They are case specific, period.

9 THE COURT: I mean, unlike a number of United  
10 States Supreme Court cases over the past 25 years that have  
11 broad constitutional implications for the entire body of  
12 criminal law, do we not see, and specifically these two cases  
13 are classic examples where the United States Supreme Court is  
14 not drawing broad bright lines for all of us with regard to  
15 many cases, but -- cherry picking cases and just case  
16 specific for those facts of that case only.

17 MS. BALIDO: Judge, I think if you're -- if  
18 I'm trying to -- I'm trying to go where you're going. If  
19 you're talking about Penry II, is that what you're talking  
20 about?

21 THE COURT: Absolutely. Penry II is a classic  
22 example of cherry -- the United States Supreme Court  
23 cherry-picking a case.

24 MS. BALIDO: Exactly, Judge. And I think if  
25 you look at the language that is used in Sandra Day

1 O'Connor's opinion, you'll see that their concerns are  
2 broader than that, that they are cherry picking certain  
3 cases.

4 THE COURT: Oh, I mean.

5 MS. BALIDO: Judge, and we would further argue  
6 that these issues that we're dealing in this case, I would  
7 say that this is one of the first trials that has gone into  
8 that unexplored area of what Texas law calls mitigation. And  
9 therefore --

10 THE COURT: Well, Penry II didn't even have  
11 the instructions that we now have.

12 MS. BALIDO: That's exactly, right, Judge.  
13 I'm just -- I'm just --

14 THE COURT: So I don't know how -- it looks  
15 like we're comparing apples and oranges.

16 MS. BALIDO: Judge, I think if you just look  
17 at -- what I'm arguing is the language and the concerns that  
18 they had in Penry II, although they cite, not necessarily  
19 with approval the Texas --

20 THE COURT: Five persons of the current United  
21 States Supreme Court I think with regard to Penry are going  
22 to do whatever they can to keep that man alive, period. And  
23 I think they have come to a conclusion, regardless how bad  
24 they even take Penry III, goes up, they'll find some other  
25 reason, based upon the language in Penry I and II.

1 MS. BALIDO: Well, maybe they're telling us  
2 something, Judge.

3 THE COURT: Well, they better get a little bit  
4 broader.

5 MS. BALIDO: So that's where we stand on  
6 our --

7 THE COURT: The Court will hold its decision  
8 until I reread the cases cited by counsel. I am however,  
9 with regard to another unfinished matter -- with regard to  
10 the questionnaire that was given --

11 MR. DAVIS: Well --

12 THE COURT: -- to --

13 MR. DAVIS: -- I can just tell you right now,  
14 I'm going to withdraw my objections, so -- for record  
15 purposes, I can do that right now.

16 THE COURT: For purpose of the record, the  
17 Court was going to grant the defense right to go into that  
18 particular matter.

19 MR. DAVIS: One --

20 THE COURT: -- for purposes of the trial  
21 record.

22 MR. DAVIS: One other thing --

23 THE COURT: Having read Wigmore, I'm convinced  
24 that his treatise is very controlling in this issue.

25 MR. DAVIS: When we had the original 705

1 hearings, the doctors indicated they would be doing some  
2 additional work, some additional research, going to  
3 additional sources for information. And so if they have done  
4 that, and certainly I would like the opportunity to again go  
5 into a 705 hearing to determine what new information they may  
6 be basing their information and their opinions on, I know Dr.  
7 Connell is here this afternoon. For instance, if she has  
8 talked with additional people, if she's done additional  
9 research, then I'd like to have the opportunity to --

10 THE COURT: May we in the interest of the jury  
11 time go into that --

12 MS. LITTLE: Since we're not starting until  
13 9:15 and she has to be here to set up, she could just be  
14 here --

15 THE COURT: Can we not have -- I mean, she can  
16 at least give the additional 705 matter, unless she's going  
17 to be doing extensive research tonight.

18 MS. LITTLE: Okay. What about the impact  
19 witnesses?

20 MR. DAVIS: I don't intend to call any  
21 individuals for that purpose.

22 MS. LITTLE: How about any other purposes?

23 MR. DAVIS: I don't intend to put on any  
24 victim impact testimony.

25 THE COURT: May we have the doctor?



1           This hearing is being conducted in open court,  
2 outside the presence and hearing of the jury panel.

3           Doctor, I anticipate this will be a short hearing.  
4 We will see you back tomorrow morning. But in interest of  
5 the jury's time, we're going to take up a matter that may or  
6 may not have some import.

7           THE WITNESS: Okay.

8           THE COURT: Let the record reflect this  
9 hearing is being conducted in open court, outside the  
10 presence and hearing of the impaneled jury. The accused, the  
11 defendant, Jedidiah Isaac Murphy, will be in court at all  
12 times during this hearing.

13           MR. DAVIS: Thank you.

14           MARY A. CONNELL  
15 was called as a witness by the State and, after having been  
16 first duly sworn, testified as follows:

17                           Direct Examination

18 By Mr. Davis:

19           Q. Again, your name is Dr. Mary Connell, correct?

20           A. That's right.

21           Q. Dr. Connell, the purpose of this hearing this  
22 afternoon is to determine if you've done any additional work  
23 on this case since our last 705 hearing. So if I may, let me  
24 ask you, first of all, have you talked with any additional  
25 individuals --

1 A. Yes.

2 Q. -- about this matter?

3 A. Sorry, yes, I have.

4 Q. And who have you talked with since our last hearing?

5 A. Matthew Murphy. Let's see, Tonya Thorp. Those are  
6 the only two family members or collateral contacts that I've  
7 talked with where there was any content other than just  
8 logistics of trying to get in touch with each other.

9 Q. Did you reduce your interviews with them to writing?

10 A. Not the one with Matthew which occurred just now in  
11 the waiting room. And the one with Tonya Thorp, I do have  
12 about one page of handwritten notes.

13 Q. Let me ask you, do you intend to make a written note  
14 of your interview with Matt Murphy?

15 A. Yes, I do.

16 Q. Do you think that will be ready by the time you  
17 testify tomorrow morning?

18 A. I think it will be, yes.

19 Q. When did you speak with Tonya Thorp?

20 A. On 6-17-01.

21 Q. Have you reviewed any additional documents or  
22 records?

23 A. Yes, I have.

24 Q. Okay. What additional records have you reviewed?

25 A. The letters from Jim Murphy that I mentioned having

1 just been handed the last time I was here. Principally  
2 letters to his mother and to Tonya, or to his mother and  
3 Tonya together. The Van Zandt County Children's Shelter  
4 records, the Fruitvale school records, and the Edgewood  
5 school records, and photographs provided by Tonya Thorp and  
6 by Tracy Erwin.

7 Q. The photographs provided by Tonya Thorp and Tracy  
8 Erwin, do you have those with you or have copies of those  
9 with you?

10 MS. LITTLE: They're right here.

11 A. The ones from Tracy Erwin are there, correct?

12 MS. LITTLE: Let the record reflect that I'm  
13 tendering those.

14 Q. (By Mr. Davis) Do you recall when you provided  
15 those to Ms. Little?

16 A. Today.

17 MS. LITTLE: Those photographs were brought  
18 this morning.

19 A. Right. Ms. Erwin told me outside that they were in  
20 here, and I asked Ms. Little for them and I think they were  
21 on the counsel table and she brought them out to me and so I  
22 had a chance to look at them.

23 Q. (By Mr. Davis) Just looking at the photographs  
24 briefly, they appear to be more childhood photographs  
25 involving the defendant, do they not?

1       A.    Yes, essentially I think there are somewhere, it's  
2   not clear exactly how old he is, but he's probably between 17  
3   and 19.  So I had specifically asked for or sought out some  
4   pictures of him from -- beyond the ones I had so from the age  
5   of 13, forward, and those were some of the pictures that I  
6   think were produced as a result of my request.  And then Ms.  
7   Thorp also tried to generate some pictures for me, which she  
8   sent me by e-mail.

9       Q.    Do you intend to use any of these new photographs in  
10  your presentation?

11      A.    Yes, I would like to.

12      Q.    Okay.  Have you already included them in your  
13  presentation?

14      A.    The ones that you're looking at, I have not yet had  
15  an opportunity to scan and upload into my presentation.  The  
16  ones that were e-mailed to me I have.  I think you have a  
17  copy of the -- or I assume you do have a copy of the power  
18  point slide presentation.  That includes those pictures, the  
19  ones from Ms. Thorp.

20      Q.    The only -- the only copy of your power point  
21  presentation I have is the one that you had with you at the  
22  last hearing.

23      A.    Okay.

24      Q.    You have -- you now have an updated power point  
25  presentation?

1 A. Yes, sir, I do.

2 Q. As I understand, that again would be updated  
3 tomorrow morning, right?

4 A. I would hope to, yes.

5 Q. So besides the defendant's letters, the Van Zandt  
6 County Children's Shelter records, Fruitvale ISD, and  
7 Edgewood ISD, as well as the photographs, any other documents  
8 that you reviewed?

9 A. No, sir.

10 Q. Have you done any further research?

11 A. No, sir.

12 Q. Have you -- have you prepared any additional  
13 reports?

14 A. Only the expansion of the report that I suppose then  
15 you have a copy of, and that expansion included Tonya Thorp's  
16 interview notes. So it was an additional two or three  
17 paragraphs.

18 Q. When you talk -- when we talk about the report, are  
19 we talking -- the original report that I was given was a  
20 17-page document?

21 A. Yes.

22 Q. Is that your report?

23 A. That's the report I'm referring to. And I said I  
24 included my interview notes with Tonya Thorp. I also  
25 extracted some material from the additional documents and

1 included that as well, so that my current report is 19 pages  
2 in length.

3 Q. Have any of your opinions changed?

4 A. No, sir.

5 Q. Did you draw any particular opinions or conclusions  
6 from your review of the additional documents?

7 A. I gathered information that I guess underscored for  
8 me a picture of -- of physical abuse in the biological home  
9 and physical and psychological abuse in the Tolar home that  
10 was somewhat clearer than I had before.

11 Q. And you got that from the -- from the documents?

12 A. From my interviews with Matthew Murphy and with  
13 Tonya Thorp. And from the review of -- of the children's --  
14 the Van Zandt County records wherein interviews with Donnie  
15 were recorded, and that commentary often included references  
16 to Jim, to his and Jim's time at the Murphy's.

17 Q. Okay.

18 A. So pulling that together.

19 Q. Do you have those records with you --

20 A. Yes, I do.

21 Q. From the children's shelter?

22 A. Yes, I do.

23 Q. And if you could, if you could just direct me to  
24 that portion of the records that you believe indicate that  
25 some sort of abuse occurred in the Tolar home?

1           A.     Okay. As I looked through the things that I have  
2 marked, I see that some of the material that I got here added  
3 descriptors to the alleged abuse in the biological home, so  
4 it's partly that that I drew into my report.

5           I marked a paragraph on the intake study, page 4, in  
6 which it mentions that Donnie described -- that Donnie's  
7 behavior was described as defiant and uncontrollable while he  
8 was at the Tolar's, and it gradually mellowed during his  
9 placement at the children's shelter afterwards. There were a  
10 number of those mentioned in this report, which certainly  
11 suggested to me that there was at least a misfit or a  
12 mismatch of personalities, that perhaps the Tolars were  
13 having some trouble setting up some sort of effective  
14 behavior management regimen in their home. And while that  
15 doesn't necessarily suggest that they become abusive, put  
16 together with what Ms. Tolar herself told me, it sort of  
17 added dimensions of understanding. And as I say,  
18 contemporaneous reports of the difficulties that the kids  
19 subsequently made much more clearly.

20           Q.     The -- you made some mention about abuse in the  
21 biological home?

22           A.     Yes, sir.

23           Q.     Okay. Directed toward the defendant?

24           A.     No, sir.

25           Q.     Who would that -- who would abuse have been directed

1 to?

2 A. Well, of course, the physical fighting between the  
3 parents, and then with Donnie's suffering a number of  
4 injuries that in today's vernacular would be considered the  
5 result at least of neglect if not some kind of inappropriate  
6 parenting. His reports that are included in here had to do  
7 with I think his father trying to teach him to drive when he  
8 was 5, him breaking his thumb, and some injuries like that  
9 that would suggest that the household was not child safe,  
10 let's say. There was some other reports I think more  
11 explicit. The father dumping Jim and Donnie out of a dump  
12 truck, resulting in Donnie breaking his arm. I understand  
13 that was not done in malice, but it was play kind of  
14 recreational type activity that resulted in a broken arm.  
15 And, of course, the theme of abandonment that I mentioned  
16 when I testified on the 17th or whatever day it was.

17 Q. Would that have been when they were taken to  
18 Buckner's or to their grandparents' to live?

19 A. Oh, yes, sir, but even before that, when the  
20 biological mother left the children with, I guess, ailing and  
21 elderly grandparents and an alcoholic father to seek her own  
22 future.

23 There were again some contemporaneous reflections of  
24 the children reporting that they were in placement because  
25 their mother hated them, the psychological evaluation of



1 Donnie that was accomplished on 4-14-74.

2 Do you want me to continue? I have three or four  
3 more places marked.

4 Q. If you don't mind.

5 A. There was an indication in a plan of service,  
6 children's plan of service dated 4-13-87 that Jim perceived  
7 that his brother was bribed to accept placement at the Van  
8 Zandt Children's Shelter rather than to be placed with Jim,  
9 and was bribed by the promise that he would receive his own  
10 allowance. Jim perceived Donnie and he to have been sort of  
11 ripped apart with the placement. I think what I understood  
12 to be a psychologically very painful loss. And that Jim --  
13 that Donnie was domineering and threatening in his  
14 interactions with Jim.

15 I think that's everything that I gleaned from that  
16 record that I felt was significant enough to include in my  
17 report.

18 Q. Okay. Do you intend to do any other work prior to  
19 your testimony then besides what you told me -- I take it you  
20 intend to update your power point presentation?

21 A. That's correct, to --

22 Q. Will you -- will you amend your report again to  
23 include the information from Matt Murphy?

24 A. Yes, and I also have calls out to several people  
25 who -- with whom I've been exchanging telephone calls,

1 continue to try to get in touch with each other. These were  
2 people I named with you the other day, I believe. I believe  
3 all of them were named. Ruby Delossier has returned my call,  
4 but I've missed contact with her. Matthew was on my list, if  
5 I recall, that I gave you. And I don't recall whether Bob  
6 Murphy was on the list that I gave you, but I would still  
7 very much like to reach him. And Jim Murphy's sponsor whose  
8 name escapes me at the moment.

9 Q. Randy Crow?

10 A. Yes, sir. I met him today, and again, we've  
11 exchanged I don't know how many phone calls trying to catch  
12 each other, but would still like to have a chance to talk  
13 with him and haven't had a chance yet.

14 MR. DAVIS: Judge, I believe that's all the  
15 questions I have this afternoon. Obviously, I'd like to have  
16 whatever updated report she has today and then whenever  
17 another report is completed tomorrow, I'd like to have that,  
18 and then I'd also like to have any written notes that she's  
19 produced since the last date. And then finally, before the  
20 presentation tomorrow, obviously I'd like to look at the  
21 amended power point presentation, see what additional  
22 photographs have been included because I anticipate that I  
23 would have the same objections to these new photographs since  
24 they do appear to me to be again the same nature photographs,  
25 childhood photographs of the defendant. So I would

1 anticipate having the same objection to those photographs  
2 tomorrow.

3 THE COURT: Ms. Connell, can you have your  
4 presentation, your power point presentation here tomorrow  
5 morning here at 9:00?

6 THE WITNESS: Yes, sir.

7 THE COURT: May we resume tomorrow morning 9  
8 o'clock then? In the meantime, I will reread the cases  
9 counsel has cited and have a ruling with regard to the  
10 photographs in question. 9 o'clock tomorrow morning.

11 THE WITNESS: Am I providing these copies to  
12 you now?

13 (Recess of proceedings.)  
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Reporter's Certificate

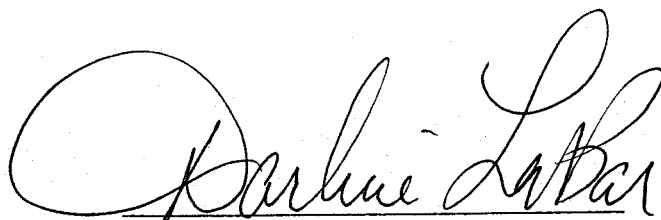
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 12th day of November, A.D., 2001.



DARLINE W. LABAR  
Official Court Reporter  
194th Judicial District Court  
Dallas County, Texas  
(214) 653-5803

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REPORTER'S RECORD

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TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT  
VS. : DALLAS COUNTY, TEXAS  
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

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PUNISHMENT PHASE BY JURY

\*\*\*\*\*

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A P P E A R A N C E S:

DEC 5 2001

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On the 28th day of June, 2001, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable F. Harold Entz, Jr.,  
Judge presiding, held in Dallas, Dallas County, Texas:  
Proceedings reported by machine shorthand, computer  
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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THE COURT: The State ready?

MR. DAVIS: The State's ready.

THE COURT: May I see the photographs that the  
defense --

MR. DAVIS: The --

MS. LITTLE: There's been two added.

MR. DAVIS: The Doctor has indicated that  
she's going to add these two photographs to the presentation,  
Your Honor.

THE COURT: Are there any -- the State have  
any objection to these two?

MR. DAVIS: Well, I would have the same  
objection. I don't think they're relevant. I don't believe  
they have any probative value with regards to mitigation.  
They simply show the defendant at apparently age 17. I don't  
know what relevance they would have to -- to any mitigation.

THE COURT: Do you object on the relevance  
grounds, Counsel?

MR. DAVIS: Yes, sir.

THE COURT: Are there any other pictures that  
the State objects to?

MR. DAVIS: Well, I'm objecting to all the  
childhood photographs as well --

THE COURT: May I see the rest of them? I've

1 not seen them.

2 MR. DAVIS: Well, those -- those will be the  
3 photographs that were previously tendered to you --

4 THE COURT: Oh, okay.

5 MR. DAVIS: -- during the first one, and I'm  
6 objecting to the picture of the headstone of Roy Donald  
7 Kines.

8 THE COURT: All right.

9 MR. DAVIS: I fail to see any relevance there.

10 THE COURT: What's the defense position with  
11 regard to the childhood photos? I assume it deals with  
12 Special Issue Number 2.

13 MS. LITTLE: Yes, sir.

14 THE COURT: I'm unable to glean any assistance  
15 it might give to the jury on Special Issue Number 1 so I  
16 assume it's for mitigation purposes and how is it relevant?

17 MS. LITTLE: It's relevant, Your Honor,  
18 because everything about the background of the person accused  
19 of this crime is relevant for Penry and other cases. We -- I  
20 mean, I -- you know, Jennifer has presented what we have to  
21 present to the Court on that. It's I think distinguishable  
22 from a lot of other things in that it's something -- these  
23 cases go on and on about mitigation and aggravation and  
24 aggravation and mitigation. It's actually a piece of  
25 evidence that is going to be mitigating without something



1 being aggravating attached to it.

2 We would urge the Court to allow these pictures and  
3 if not all of them, at least some of them.

4 THE COURT: The Court during the  
5 guilt/innocence stage of the trial ruled that there were  
6 several offered graphic photos that the Court determined that  
7 the prejudicial effect outweighed any probative value. Last  
8 night after we adjourned the proceedings in the courtroom, I  
9 took upon myself to evaluate the cases about which counsel  
10 made reference. And I find particularly Court of Criminal  
11 Appeal opinion Jackson v. State, found 992 Southwest 2d 469  
12 at page 480, headnotes 14 and 15, to be illustrative and of  
13 some benefit to the Court. Without reading the entire  
14 headnote, I will quote what is the pertinent portion from the  
15 Court of Criminal Appeals. Quoting: We reject the notion  
16 that every single piece of information about a defendant is  
17 relevant without regard to whether that information would  
18 tend to show that a life sentence, comma, rather than a death  
19 penalty, comma, is warranted, period. That appellant was  
20 once a child, comma, even a happy one, comma, does not,  
21 comma, in itself, comma, have any tendency to show that he  
22 should receive a life sentence rather than a death penalty,  
23 period, close quote.

24 For that reason the Court sustains the State's  
25 objections with regard to the childhood photos, save and

1 except if there are any particular childhood photos that are  
2 of a significant mitigating nature such as -- and I know not  
3 this to be the case, I don't recall -- vestments of the  
4 defendant was a child, an alter boy or had a time when he  
5 received some type of special recognition for some type of  
6 athletic achievement or a Boy Scout award, not necessarily,  
7 but, of course, including Eagle Scout, but if there is some  
8 particularly germane photo of a mitigating nature as opposed  
9 to just a generic childhood photo, the Court will allow that  
10 to be offered to the jury, but generic childhood photos,  
11 based upon the authority of the Court of Criminal Appeals,  
12 I've decided the State's objection is sustained.

13 MS. LITTLE: Can I add one thing for the  
14 record, Your Honor?

15 THE COURT: Absolutely.

16 MS. LITTLE: One of the big issues here is the  
17 treatment of Jim Murphy, whether it to be considered  
18 aggravating or mitigating, in the Tolar household. There are  
19 a number of photographs from that household which are  
20 indicative, if the jury sees fit to take them that way, of an  
21 unhappy child in an unhappy setting because there's numerous  
22 photographs at holiday times with no smiling child. We think  
23 that is germane because that is something for the jury to  
24 consider in determining how much aggravation or mitigation  
25 there would be --

1 THE COURT: I will permit those limited  
2 photographs, limited to the Tolar holiday occasions about  
3 which Ms. Little made reference.

4 Anything further of the hearings?

5 MR. DAVIS: No, Your Honor.

6 THE COURT: May we have the jury, please.

7 MS. BALIDO: Judge, I've got a couple of  
8 tables that might facilitate this a little bit better.

9 THE COURT: All right. Quickly, then. We've  
10 only had since yesterday at 4:30.

11 Limit it to the holiday occasions if you would,  
12 Doctor.

13 MS. BALIDO: Judge, was that on the record?

14 THE COURT: You may.

15 MS. BALIDO: Judge, let the record reflect  
16 that during an off-the-record discussion, Dr. Connell was  
17 explaining that she is rearranging her presentation and  
18 expressed that she thought that the pictures that she had  
19 were germane, pursuant to the Court's ruling. At that time  
20 Mr. Davis expressed that the first picture shown was simply  
21 entitled -- what, Mr. Davis?

22 MR. DAVIS: Well, it's not just the first  
23 picture. First picture I do object to because it's entitled  
24 Donnie and Jim are placed with the Tolars. He's standing  
25 with his brother by an automobile or pickup truck.

1           The second photograph I'm going to object to, too,  
2       because it says the Tolar boys. And he's pictured with the  
3       three natural children of the Tolars. And again, that  
4       doesn't appear to be a holiday photograph.

5           The next one I would object to is with the Tolars  
6       from 1983 until 1988, and he's standing with -- well, that  
7       apparently is mistitled because then the text is Jim Murphy  
8       is front and center with Mr. Murphy, the three Murphy boys,  
9       and Donnie.

10          Now, the next one, I don't -- you know, pursuant to  
11       the Court's ruling, I wouldn't object to because it appears  
12       to be Jim's 8th birthday which would be a holiday.

13          The next one is Christmas 1983, which I would think  
14       would be admissible.

15          The next one is Christmas and birthday pictures  
16       which, again, I would think to be admissible.

17          The next one is paternal grandparents with the  
18       children. Doesn't appear to be a holiday setting. They  
19       simply appear to be standing on some sort of porch together.

20          The next one I would think would not be admissible.  
21       That's biological father died when Jim was 9. That's a  
22       photograph of the grave of Roy Donald Kines.

23          The next two are birthday and Christmas, so I would  
24       have no objection to that.

25          The next one is Christmas 1987. Wouldn't have any

1 objections to that one.

2 The next one is picture of Edgewood High School.

3 I'm not going to object to that one.

4 THE WITNESS: There should be a picture of Jim  
5 and Matt at age 17 just before their high school.

6 MR. DAVIS: Okay. Then I would object to that  
7 one. That's not a holiday.

8 Jim Murphy and daughter Alyssa which I would object  
9 to. It doesn't pertain to any special awards, holidays,  
10 etcetera.

11 THE COURT: The Court will overrule the  
12 State's objection. I'll permit that one to be shown.

13 MR. DAVIS: Okay. The photograph Jim and  
14 Matthew at age 17, I would object to. It's just he and Matt  
15 standing together.

16 Jim Murphy at home at about age 17. He's simply  
17 sitting in an easy chair with a cowboy hat on. It doesn't  
18 appear to be a holiday so I'm going to object to that one.

19 There are certain of them that I don't think would  
20 fall within the Court's ruling.

21 THE COURT: As I reiterated, limit it to  
22 holiday scenes for the mitigating issue of unhappiness at  
23 holidays, but just general generic photos, the Court,  
24 pursuant to the Jackson v. State case is sustained, the  
25 State's objection on the grounds of relevance.

1 MS. LITTLE: You are allowing the picture with  
2 the child, though, aren't you?

3 THE COURT: Yes, I am.

4 THE WITNESS: Shall I tell you which ones I've  
5 X'd out then?

6 MR. DAVIS: If you don't mind.

7 THE WITNESS: Okay. I'm sorry, Your Honor,  
8 the headstone?

9 THE COURT: Out. Can we save this for  
10 purposes of the trial record, Doctor, so --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- the appellate court may see  
13 differently than I.

14 THE WITNESS: Okay. I've removed slides --  
15 Slides Number 11 and 12. That's Donnie and Jim at the outset  
16 of the Tolar placement and with the Tolar boys in a studio  
17 type picture. Number 13, which is Jim and Donnie and the  
18 Tolar boys with Mr. Tolar. I left in Number 14, 15, and 16.  
19 Those are the holiday photos. I took out Number 17, which  
20 was the Tolar boys -- I'm sorry, Jim and Donnie and I think  
21 there may be some other Kines children with the  
22 grandparents. I took out Number 19, the headstone. I left  
23 in Number 20, which was Christmas 1985. It's just Jim. I  
24 left in Number 21 which is 11th birthday. I took out Number  
25 22 which although it was a holiday picture, it does not go to

1 the issue of unhappiness at the holidays. I took out Number  
2 31 which was Jim and Matthew at a sporting event in a high  
3 school gym, I believe, but there was no indication that they  
4 were being awarded something. I left in his graduation. I  
5 took out the picture of Jim sitting in the recliner holding  
6 the puppy. And I left in Alyssa.

7 THE COURT: Thank you, Doctor.

8 Sheriff, may we have the jury, please.

9 THE BAILIFF: All rise.

10 THE COURT: Let the record reflect the jury is  
11 returning to the courtroom at this time.

12 (Jury returned to courtroom.)

13 THE COURT: Jurors may be seated.

14 Mr. Murphy, counsel, visitors in the gallery, you  
15 may be seated.

16 Ladies and gentlemen, this witness has previously  
17 been sworn in. She is under oath.

18 MS. LITTLE: May I?

19 MARY A. CONNELL

20 was called as a witness by the Defendant and, after having  
21 been first duly sworn, testified as follows:

22 Direct Examination

23 By Ms. Little:

24 Q. State your name, please, ma'am.

25 A. I'm Mary Connell.

1 Q. And you are a doctor of psychology; is that correct?

2 A. Correct.

3 Q. Dr. Connell, do you live here in Texas?

4 A. I do.

5 Q. And where do you live?

6 A. In Fort Worth, Texas.

7 Q. Do you -- did you begin a psychologist, or how did  
8 your work career begin?

9 A. Actually while I was working on my doctorate I  
10 worked as a Child Protective Services caseworker for three  
11 years in Tarrant County. And when I got my doctorate, I went  
12 to work then as a psychological intern or trainee at the  
13 county mental health center on a Child Protective Services  
14 contract. After my first year when I was fully licensed, I  
15 became the managing director of that contract and continued  
16 for another two years at MHMR working on the Child Protective  
17 Services contract and with Child and Family Services at  
18 MHMR. I then went into private practice and worked under  
19 contract with Child Protective Services for the following 15  
20 years doing evaluations of children and placement and of  
21 parents who were allegedly abusive or neglectful. At the  
22 same time I was doing that, I was developing my own private  
23 practice as a psychotherapist and eventually as a -- an  
24 evaluator of families in distress. I do a great many  
25 court-ordered child custody evaluations of families,



1 particularly where sexual abuse has been alleged as part of  
2 the divorce and custody battle.

3 Q. What -- what kind of work were you doing for CPS  
4 when you worked for them?

5 A. I was a caseworker doing investigations of abuse and  
6 neglect referrals for the first two and a half years, and for  
7 the last six months I was a supervisor training field  
8 placements, social work students.

9 Q. And what education did you have at the time you were  
10 holding that job?

11 A. A Master's degree in counseling.

12 Q. And where did you receive that degree?

13 A. East Texas State -- I'm sorry Southeast Missouri  
14 State, then college, now a university.

15 Q. And where is your Bachelor's degree from?

16 A. The same institution.

17 Q. Okay. And where did you get your Ph.D.?

18 A. East Texas State University, now Texas A&M, and it's  
19 an EDD, a doctor of education.

20 Q. All right. And when did you complete that degree,  
21 the last one?

22 A. 1978.

23 Q. How long have you been in this business, Dr.  
24 Connell? Since what year?

25 A. Well, I got my Master's in 1969 and began working

1 actually at Buckner Baptist Children's Home. That was my  
2 first semi-professional job. I worked there for two years as  
3 a psychological associate, so I think it would be correct to  
4 say 1969 or '70 is when I began my career as a psychologist.

5 Q. And you are here today to talk to this jury about  
6 Jim Murphy; is that correct?

7 A. That's correct.

8 Q. What is your role in this case?

9 A. I've been asked to do an evaluation of Mr. Murphy to  
10 look at one of the special issues that the jury can consider  
11 in sentencing, Special Issue Number 2.

12 Q. And that is which issue?

13 A. Whether taking into consideration all of the  
14 evidence, including the circumstances of the offense, the  
15 defendant's character and background, and the personal moral  
16 culpability of the defendant, there is sufficient mitigating  
17 circumstance or circumstances to warrant that a sentence of  
18 life imprisonment rather than a death sentence be imposed.

19 Q. And in order to prepare information for this jury,  
20 what did you do, Dr. Connell?

21 A. I did a number of things. First, I reviewed volumes  
22 of records regarding the crime, Mr. Murphy's background, his  
23 medical records and school records, and so forth. And then I  
24 met with him on three occasions, both interviewing and  
25 testing him each time I met with him. The last time was

1 almost exclusively testing, but in the first two interviews  
2 with him, I gathered a history from him regarding his growing  
3 up years and how he came to this point in his life and I  
4 asked him questions about the crime.

5 In addition to the interviews, I did a number of  
6 tests. One is the Shipley Institute of Living Scale, which  
7 is a brief measure of intellectual functioning. And I  
8 administered it just to get a general sense of whether he had  
9 achieved at the expected level or whether he was an  
10 underachiever or an overachiever academically and in terms of  
11 his career.

12 Q. What were the results of that test?

13 A. He tested within the average range which is about in  
14 keeping with his work as a welder, with the fact that he has  
15 a high school education, so it seemed that he was functioning  
16 at about the level one would expect intellectually. I did  
17 not do the further testing to look at the learning disorder  
18 that would be expected, based on some early diagnoses of  
19 attention deficit hyperactive disorder but just wanted to get  
20 a very global sense of his present intellectual functioning.

21 Q. All right.

22 A. Then I did two tests that are designed to sample  
23 personality attributes. These are tests that involve Mr.  
24 Murphy describing himself and by responding to some  
25 true-false questions. One is the MMPI II, and that stands

1 for Minnesota Multiphasic Personality Inventory, II. That  
2 test is a 567-item test, and it's kind of the standard or the  
3 flagship in personality assessment. It's been in use for  
4 about 50 years, and we have thousands and thousands of  
5 studies on how different people in different populations test  
6 on this instrument. I gave this test to Mr. Murphy and  
7 scored the results with a computer system looking at the kind  
8 of clinical interpretation, how did he look compared to other  
9 people in a clinical setting.

10 Do you want me to talk about the results?

11 Q. Tell the jury what a clinical setting is.

12 A. Well, as opposed to testing normals or people in a  
13 job application setting. For example, we use this test to  
14 screen police officers or security guards. There we expect  
15 they're a reasonably normal outcome and we compare the person  
16 that we're testing to other people who are reasonably normal.  
17 I scored Mr. Murphy's test with norms for a clinical  
18 population which would be a population of people who have  
19 problems, who are coming in for treatment, or who are in a  
20 mental hospital, people who are mentally disturbed, or who  
21 have emotional distress rather than people that are trying to  
22 seem normal.

23 And the results of that suggested that he was  
24 extremely, extremely symptomatic.

25 Q. What does that mean?

1       A.    He subscribed to a broad range of symptoms, symptoms  
2 of depression, anxiety, physical ailments, aches and pains,  
3 physical distress, such as stomachache, headaches, back,  
4 neck. He subscribed to paranoid thoughts, feeling that  
5 people were out to get him or plotting to do harm to him,  
6 that he was suspicious and guarded, couldn't trust other  
7 people easily. He subscribed to such a broad range of  
8 symptoms that the first interpretation is that this person  
9 may be exaggerating.

10           However, when I looked at the specific items that he  
11 subscribed to and considered those in light of my interview  
12 observations, I found that it didn't seem to me that he was  
13 exaggerating. It seemed to me that he was being fairly  
14 faithful in describing himself and his functioning,  
15 acknowledging all of his shortcomings in terms of his alcohol  
16 dependence, his family relationships being disturbed. All of  
17 those things go into the formula to elevate the scales. So  
18 as I went through, I couldn't find any places where it seemed  
19 to me that he was exaggerating.

20           I also administered the Millon Clinical Multiaxial  
21 Inventory 3. The -- we call it the MCMI 3. And this test is  
22 somewhat shorter, 185 items, I believe, or 175 -- 175. And  
23 it is aimed at looking at character problems. This test  
24 samples problems in the development of character. Again,  
25 trust issues, interpersonal issues, whether the person

1 exploits other people or treats other people with integrity,  
2 whether the person has pride and controls his behavior or  
3 whether he acts out. So it looks at those kind of things,  
4 character pathology. And again, Mr. Murphy subscribed to a  
5 broad range of symptoms. He described himself in fairly  
6 harsh terms, made no effort to try to look good on either of  
7 these instruments. There's a measure that we call the lie  
8 scale or on the MCMI, the desire -- social desirability scale  
9 where a person who is trying to impress you distorts the  
10 truth a little and tries to look better than the average  
11 person. In no way did Mr. Murphy attempt to look positive.  
12 He was his own harshest critic, I think you can say.

13 And so in both of these tests the results were  
14 suggestive of very, very disturbed functioning, extreme  
15 emotional distress, and a great many symptoms. In both cases  
16 these results would be results that would cause you to make a  
17 referral for psychiatric consultation and would probably  
18 result in a person being medicated.

19 Q. All right. Because he was so symptomatic, did you  
20 do any further testing to see if there was any malingering or  
21 anything like that?

22 A. Yes, I did. And would do so routinely. I think in  
23 a forensic setting, that is we always consider when we're  
24 seeing somebody who didn't come in to get help, somebody  
25 who's being sent to us by someone else, to try to learn

1 something about that person. We always consider that that  
2 person is trying to control the outcome, that they're trying  
3 to control how we see them, they're trying to spin things for  
4 their own advantage. So there are a number of scales built  
5 into these tests to look at that tendency, and then there are  
6 specific tests developed for that purpose.

7 I've referred to some of the tests that -- the  
8 scales are built in, such as the lie scale or the social  
9 desirability scale. Faking bad is another tendency that we'd  
10 consider. And in fact that was elevated on the MMPI-2, that  
11 it look as through Mr. Murphy might be trying to look sick.

12 Q. Okay.

13 A. So I gave the TOMM, which is the test of memory and  
14 malingering, and that is a test that's specifically designed  
15 to try to catch a person at malingering, to see if --  
16 malingering means trying to look sick. Like if somebody  
17 comes in, they're trying to get some medication because they  
18 like to use it for recreational purposes, they might  
19 malingering. Or if a person is trying to get out of the  
20 military, they might malingering trying to look sick. So that's  
21 what the TOMM is designed to measure.

22 Q. And you did give him that test?

23 A. Yes, I did.

24 Q. And what were the results of that test?

25 A. The results were that he was at the far extreme in

1 not trying to malingering. He answered all of the questions  
2 right, and only missed one and then corrected himself so that  
3 he actually had a perfect score. Where a malingerer will get  
4 them all right or many of them right the first time, but then  
5 on the memory part, when they're asked 30 minutes later to go  
6 through it again, they will show -- they'll try to show that  
7 they're cognitively slipping, that they're addled and they'll  
8 miss some on purpose. It's an easy test that anybody should  
9 be able to get seven-eighths of the items right. Somewhat  
10 unusual for somebody to make a perfect score.

11 Q. All right.

12 A. Mr. Murphy showed no evidence of trying to malingering.

13 Q. And where was this testing done?

14 A. In each case in the Lew Sterrett jail. The last  
15 test was administered in the holding room right off of this  
16 room.

17 Q. And how long altogether did you talk to Jim Murphy?

18 A. I think my -- my interviews that included testing  
19 ran around seven hours. Now, some of that time I was just  
20 sitting and making notes while he completed test  
21 questionnaires.

22 Q. All right. Now, did you also make an attempt to  
23 find out something about his background?

24 A. Yes, I did.

25 Q. What did you do to get that information, Dr.



1 Connell?

2 A. In addition to reviewing records, I talked to a  
3 great many family members or associates who had known him  
4 when he was growing up. We refer to these as collateral  
5 contacts. And the purpose of them is again, when someone is  
6 coming because someone else us wants us to assess them, we  
7 assume that they are trying to control the outcome. We do a  
8 lot of checking and double-checking to see if what they tell  
9 us turns out to be correct. So I think I had about 8  
10 collateral contacts, 8 or 10, people that I interviewed by --  
11 generally by telephone.

12 Q. All right. And I don't know -- I'm not sure which  
13 is the best way to break this up. What did you learn from  
14 his early years?

15 A. The picture I gathered from the first five years of  
16 his life was that he lived with full siblings and half  
17 siblings in a household where he was the fifth of six  
18 children born to his mother. His father, as I understand it,  
19 was married about five times. He and -- I believe he and  
20 Donnie, his next older brother, and maybe Holly, his younger  
21 sister, were biological children of his parents. And then --

22 Q. Hope Abbott and Donnie Murphy?

23 A. Correct. And then Hope Abbott had three children  
24 from previous marriages who also lived in the house. They  
25 lived in Kaufman, Texas, in a fairly rural area, sometimes in

1 the home of the paternal grandparents, Donnie Kines, Sr.'s  
2 parents, and sometimes down the street -- down the road a  
3 ways in a house of their own. It's not altogether clear to  
4 me exactly what point Hope Abbott left, but sometime during  
5 the first five years and possibly fairly early during that  
6 time she left for a considerable period and the children were  
7 left with their father and grandparents. I think then she  
8 returned. As I understand it, Donnie Kines was an alcoholic  
9 and was a very, very abusive man. The children witnessed a  
10 great deal of fighting between their parents. According to  
11 Ms. Abbott, she tried generally to get between him and the  
12 kids if it seemed that his anger was going to be directed at  
13 one of the kids. And Jim himself said he had no recollection  
14 of ever having been abused at his father's hand. Although he  
15 understood from later years that his father may have been  
16 abusive to some of the kids at some of the time. He didn't  
17 remember that.

18 He did remember seeing his father, as he put it,  
19 knock his mother's teeth down her throat. Remembered his  
20 father being taken off to jail and/or a hospital. So as I  
21 understand it, the home was a very volatile one, and there  
22 was a good deal of psychological strain and possibly  
23 emotional abuse.

24 I think I have maybe a picture of the household.  
25 This -- I don't know if you can see this. Is that in a place

1 where any of you can see it?

2 MS. LITTLE: I think we'll have to move it up  
3 and down so they can't see it.

4 JUROR: Yeah, that's better.

5 THE WITNESS: Okay.

6 A. This is the house of the grandparents. This is the  
7 front porch. And it's a very -- very small house. I assume  
8 it was quite crowded when there were six children and four  
9 adults living there.

10 Q. (By Ms. Little) Now, we tried, Dr. Connell, to use  
11 this big TV, didn't we?

12 A. Yes, we did. And there was a clicker and we weren't  
13 able to do that. And I apologize. That was prepared with  
14 the assumption you'd be able to see it from there.

15 This is Roy Don Kines, Mr. Murphy's father.

16 Q. If we could slide this up and down, that may be the  
17 best. Let's just start up there.

18 How about -- how heavy is this? These wheels are  
19 kind of doing like the grocery carts do.

20 A. Oh, you mean up and down this way?

21 Q. Uh-huh.

22 A. And that's the grandparents -- Kines grandparents.

23 Q. Okay.

24 A. Where are we now? Okay.

25 Q. And how long did those six children stay with Donnie

1 Kines Sr. and Hope?

2 A. All six together intermittently during those five  
3 years, the first five years of Jim's life. As I say, I think  
4 Hope took the three older ones off at some point or perhaps  
5 left without them altogether and then came back. And when  
6 Jim was 5, I think she took all six children and placed them  
7 at Buckner Children's Home. And that's Buckner on the screen  
8 there.

9 Q. I can't see it.

10 (Laptop screen being rolled on a cart in front of jury.)

11 Q. (By Ms. Little) Now, did you become aware that --

12 MS. LITTLE: Thank you.

13 Q. (By Ms. Little) Did you become aware that Tonya  
14 would not stay at Buckner? She was the oldest child; is that  
15 right?

16 A. Correct.

17 Q. But the others were stuck there until somebody came  
18 or --

19 A. Exactly. There is again a little confusion about  
20 how long they were there, and we've been unable to obtain the  
21 records from Buckner for some reason. There surely should be  
22 a fairly full set of records, but it's been impossible to get  
23 ahold of those.

24 In the neighborhood of a year, apparently, Jim,  
25 Donnie, and Holly remained at Buckner, but sometime during

1 that time Tonya went to live with an aunt, refusing to stay  
2 at Buckner. Then I believe her mother came back and gathered  
3 up her and the two older children and left, leaving Donnie,  
4 Jim, and Holly at Buckner. Subsequent to that I think that  
5 the paternal grandparents took the kids home and tried to  
6 keep them, but were both ailing, and Mr. Kines, the father,  
7 was severely alcoholic and sick, at that point terminally  
8 ill. And it was determined that they just couldn't take care  
9 of the children.

10 Q. All right. And what affect did this have on Jim  
11 Murphy?

12 A. I think as I understand it, his recollection of that  
13 period is that his mother just couldn't or wouldn't take care  
14 of him and that his grandparents couldn't either. He's, I  
15 think, unable to articulate what that must have felt like,  
16 but I understand from some later iterations how he perceived  
17 it. That would be moving forward a bit.

18 Q. Okay. And Donnie also was involved in this, and  
19 they were both basically dropped off at the orphanage for  
20 that period of time?

21 A. That's right.

22 Q. Am I moving too far ahead for you to discuss the  
23 boys' reaction to this, that you may have thought was unlike  
24 many children when they are left at an orphanage?

25 A. Right. That would be when they were at the Tolar

1 home and what the Tolars told me.

2 Q. Okay. And you said that Jim was there for about a  
3 year?

4 A. As I understand it.

5 Q. We don't know exactly.

6 A. Right. I gather certainly well over six months, and  
7 it may have been a year and a half. I'm just not able to tie  
8 that down.

9 Q. Now, he did get adopted by the Tolar family; is that  
10 correct?

11 A. Correct. After the grandparents got the children  
12 out and tried to continue raising the three youngest kids, I  
13 think it was perceived they couldn't do that and a family --  
14 extended family member, an aunt, arranged the placement with  
15 the Tolars for Jim and Donnie. The Tolars were apparently an  
16 acquaintance through church, and so it was arranged that  
17 Donnie and Jim would go and live with the Tolars.

18 Q. About what time was that? Do you know?

19 A. As nearly as I've been able to pin down -- I'm  
20 sorry, I think it was before Jim's 8th birthday, because  
21 certainly he spent his 8th birthday at the Tolar's and he was  
22 there for five years ending at the age of 12, so he must have  
23 been 7.

24 Q. All right. Have you talked to Terry Tolar, Mr.  
25 Tolar?

1 A. No, I haven't. I met him, but I didn't interview  
2 him. I talked with Celeste.

3 Q. Celeste, Mrs. Tolar?

4 A. Yes.

5 Q. Now, Donnie and Jim both went to live with the  
6 Tolars who already had three sons; is that correct?

7 A. That's correct.

8 Q. Do you know what kind of work Mr. Tolar was doing?

9 A. Yes, he was a fire fighter.

10 Q. And what kind of a routine did they have in that  
11 household, as best as you could understand?

12 A. As I understood it, he worked long shifts, 48 hours,  
13 then he would be off for 24 hours. Which would leave her at  
14 home with five boys while he was at work for 48 hours.

15 Q. Now, was Jim having any problems at that time that  
16 you've been able to find out?

17 A. What I understood from virtually all sources was  
18 that Jim was an extremely cooperative child who was doing his  
19 best to make a good -- a good adaptation to the Tolar home,  
20 was a reasonably well-behaved child, was, according to Ms.  
21 Tolar, happy or good-spirited, well-behaved child.

22 Q. How about Donnie?

23 A. Donnie was apparently having tremendous difficulty  
24 behaviorally, and his behavior problems escalated the whole  
25 time he was at the Tolar's. Apparently there were numerous

1 problems. Ms. Tolar told me that she and Donnie were in  
2 counseling at one point out at the Canton MHMR. She said  
3 that Jim might have gone with them a couple of times, but the  
4 thrust of that counseling was aimed at trying to help her  
5 gain control of Donnie's behavior.

6 Q. And did you talk to Donnie about their lives at the  
7 Tolar's?

8 A. Yes, I did.

9 Q. What did you learn from him about that?

10 A. Well, he said that there would be three or four or  
11 five boys in the house with Ms. Tolar. And he said that  
12 regarding Mr. Tolar, he said "that dude was mean. He'd come  
13 home and she'd tell him everything we did. He'd try to talk  
14 to us and he'd scream and start going crazy and he would hit  
15 you with anything he could get." Donnie went on to say, he  
16 was rough, that dude. He'd grab you. He was really rough on  
17 my brother. He, my brother, was quiet, kind of stayed off to  
18 himself, bashful, I guess, always off with one person or  
19 alone, not with a group of kids. He said that Mrs. Tolar  
20 provoked most of the troubles telling Mr. Tolar things they  
21 had done.

22 Q. This is Donnie, correct?

23 A. Uh-huh. And he said I guess it made that guy  
24 crazy. I asked if Mr. Tolar was a drinker, and Donnie said  
25 that he wasn't but that he was, quote, real weirded out on



1 religion.

2 Q. What else did Donnie say about religion and that  
3 connection?

4 A. He said, don't get me wrong, I believe in Jesus  
5 Christ, heaven, and hell, but they were too much. He said  
6 the Tolars wouldn't let them have friends who weren't just  
7 like them.

8 I asked if Child Protective Services was ever  
9 involved because of this alleged abuse, and Donnie said -- he  
10 said that guy got to acting crazy picking on me, on my  
11 brother two or three days before. He said if they had not  
12 come, I probably would have killed somebody. My dad --

13 Q. This is Donnie?

14 A. Yeah. He said, my dad being dead, he told me to  
15 look after my little brother. And that guy yelling and  
16 screaming at him all the time, making him go to bed before  
17 everybody else, mental disease, I don't know.

18 He went on to say that Jim was kind of an isolate  
19 and that he tried to protect Jim, that Mr. Tolar's focus on  
20 Jim enraged him.

21 Q. Enraged Donnie?

22 A. Yes.

23 Q. Mentally where would you say the boys were with  
24 their feeling of acceptance in the world when they came to  
25 the Tolars?

1       A.    Ms. Tolar told me that they said from the beginning  
2       that they were there because their mamma didn't love them,  
3       didn't want them.

4       Q.    Did you find that an unusual expression of feeling  
5       on children that age?

6       A.    I did.

7       Q.    How so?

8       A.    Well, in my own work at Buckner, for the -- I think  
9       year and a half or two years that I was there, in testing the  
10      children who were placed there, I was always struck by how  
11      these kids, most of whom had biological parents in the world,  
12      it's called an orphanage, but -- or it used to be called an  
13      orphanage, but there were very few full orphans there. And  
14      most of the kids would talk about their biological parents in  
15      idealized terms, and they would say that their parent or  
16      parents were going to come get them at Easter or at Christmas  
17      or at their birthday their parents would come and get them.  
18      And they held out those hopes even in the face of evidence to  
19      the contrary. And so it just struck me as highly unusual for  
20      a child of that age to have integrated the harsh reality that  
21      a parent just didn't love them enough to take care of them.

22      Q.    And what else did you learn about the years at the  
23      Tolar's?

24      A.    Well, I inquired of Ms. Tolar what life was like and  
25      she talked about -- as I said, she talked about the therapy.

1 She said that Jim was a fairly good student in regular  
2 classroom, that he made several A's, that he was never  
3 diagnosed with difficulties, while Donnie was on Ritalin  
4 briefly. She said that Donnie was loud and rebellious and  
5 destructive, and they would put him in a room for time-out,  
6 and he would break a window or knock a hole in the wall. And  
7 she said the other boys could hear all of this conflict. She  
8 said Jim wasn't hard to manage until the last few months, and  
9 then the boys would team up some. Otherwise, she said Jim  
10 was lighthearted, entertaining, convivial, full of life, and  
11 they felt he had a bright future.

12 I asked her about discipline. She said they called  
13 for the police for help with Donnie on one occasion. I asked  
14 her if it was her husband who carried out most of the  
15 discipline as Donnie had told me, and she said she herself  
16 disciplined, quote, to the best of my strength, but that  
17 Terry, when he got home, would discipline the children, too.

18 I asked her if Child Protective Services was ever  
19 involved with the family and she said, no, the kids acted  
20 better at school than they did at home.

21 Q. What significance, if any, do you find in that?

22 A. Well, that in addition to the observation from the  
23 children's shelter records after they were removed and  
24 Donnie's behavior steadily improving and then Mr. Murphy's  
25 report to me that Jim was doing very poorly in school by the

1 end of the Tolar placement and immediately began to do better  
2 when he was in the Murphy home, all suggest to me that these  
3 kids were in fact having quite a hard time at the Murphy  
4 home.

5 Q. At the Murphy or the Tolar?

6 A. I'm sorry, at the Tolar home, that there was  
7 something very wrong in that household and that the kids were  
8 functioning better anywhere else than there. Would suggest  
9 to me that the problem might have not just been the kids, but  
10 there might have been some problems in parenting.

11 Q. Okay. Go ahead.

12 A. Well, ultimately that placement then broke down --

13 Q. Let's go back just one second here. You did get --  
14 did you go see Celeste Tolar and talk to her?

15 A. Yes, I did.

16 Q. What were the conditions under which you were able  
17 to do that?

18 A. I called her and talked with her on the telephone  
19 and got this information from her on the telephone -- over  
20 the telephone. And I wanted to try and get some pictures and  
21 report cards and records from that period of time. And I  
22 asked her, and she said in fact that she had those and that  
23 she had some years earlier divided out into five boxes, the  
24 pictures for each of the five boys. And that I could have  
25 the pictures. In fact, while we talked on the telephone, she

1 went and found the box and said, yes, here it is. And she  
2 started going through Jim's box and telling me what was  
3 there. And so I asked if I could come out and pick them up.  
4 We talked about various ways of my arranging to get them.  
5 And understood that she was going to be going to Lake Whitney  
6 the next morning. It was about 4:00 in the afternoon when I  
7 was talking to her, and she was going to be leaving the next  
8 morning. We talked about meeting in Forney, but ultimately I  
9 decided to go right then and get the pictures.

10 Q. Did you go to Grand Saline, or where did you go?

11 A. Yes, I did, I went to Grand Saline.

12 Q. Did you talk to her further while you were there and  
13 get the pictures?

14 A. I did talk with her briefly as she gave me the  
15 pictures and told me what they were, showed me who was who.  
16 Mr. Tolar was in and out preparing, I think, an RV for the --  
17 they had a family reunion at the -- Lake Whitney the next day  
18 and so I could see that they were in the middle of  
19 preparation so I didn't protract that discussion with her at  
20 all, just got the pictures and left.

21 Q. Okay. And in looking at those pictures, did you  
22 look at a number of them that had Jim and/or Donnie in them?

23 A. Yes, I haven't counted, but there was somewhere  
24 between 20 and 30 pictures that she gave me.

25 Q. Was there anything significant about those pictures

1 that you noticed in just looking at them?

2 A. Yes. I felt it was very significant that most of  
3 the pictures had been taken around holiday or special events,  
4 birthdays, Christmas, and almost to a number Jim was not  
5 smiling. He was very somber in almost all the pictures.  
6 There were a few posed pictures that were the exception, when  
7 all the kids were lined up for a photo. But generally  
8 speaking, even if he was opening his own present at his own  
9 birthday party, he would not be smiling. When the  
10 grandparents apparently came to visit for Christmas, the  
11 paternal grandparents, there was a picture of the children  
12 all surrounding the grandparents and all the kids were  
13 looking at the camera and the were looking at the camera, but  
14 Jim was standing right next to his grandfather and he was  
15 looking at his grandfather, so it seemed to me that -- that  
16 he was a fairly unhappy or somber child.

17 Q. Do we have some of those holiday pictures here?

18 A. I think so, yes. Let's see, this is Buckner as we  
19 said, and this is his 8th birthday. And there was a glow of  
20 light on the part of his face, which you may be able to see.

21 Okay. If you can see this. This is him and I think  
22 this is Donnie and this is Jim's first Christmas, also age 8.

23 This is a picture I just described at Christmas  
24 where all the children -- and this -- this may be Donnie  
25 here. There's Jim. There's his grandfather. This is Jim

1 looking at his grandfather. I'm sorry, that's small and hard  
2 to see.

3 Right there and there's his grandfather looking  
4 down. This is his third Christmas at the Tolar's. And his  
5 11th birthday. Okay. I think that's it.

6 (Photographs shown to jury.)

7 Q. (By Ms. Little) Okay. You said that the kids  
8 seemed to do better at school and at the shelter they later  
9 went to and that Jim and -- Jim and Donnie began to sort of  
10 gang up together towards the end which was a problem for the  
11 Tolars; is that right?

12 A. That's correct. Ms. Tolar said, and I quote, when  
13 we couldn't hold them any longer, we turned them over to the  
14 Van Zandt County Children's Shelter.

15 Q. And then they -- when did they go to that shelter,  
16 Dr. Connell?

17 A. I think it was on New Year's Day, following that  
18 last Christmas that I just showed you pictures. So again,  
19 I've had some difficulty getting dates, but I believe it was  
20 as Jim was 12 years of age and he went to the Fruitvale  
21 school while he was at the shelter.

22 Q. What did you find out about both boys while they  
23 were at the Van Zandt County Children's Shelter?

24 A. As I said, Donnie almost immediately began to be  
25 more compliant, seemed to be, according to the records, eager

1 to establish relationships with adults, including the staff  
2 there, and then subsequently to Jim's next adoptive parents,  
3 the Murphys, Donnie -- Donnie's records are much more replete  
4 than Jim's are from the children's shelter. Probably -- I  
5 would assume that he was having more studies done of him  
6 because of his reported bad behavior. His grades improved.

7 Q. Donnie's or Jim's?

8 A. Donnie's. He had no problems at school. He gave  
9 the history to the caseworkers who did the intake study and  
10 talked about their childhood, talked about why they were in  
11 placement, that they were there because their grandparents  
12 became ill and died. In fact, both grandparents and the  
13 father died during the Tolar placement. So by the time the  
14 kids left the Tolars, they had not seen their mother in a  
15 good long while and they basically had no -- no family at all  
16 in their -- in the way that they looked at the world I think,  
17 except each other.

18 Intake studies indicate that Donnie had come to  
19 understand from Mrs. Tolar that the kids were a package deal,  
20 and that was very important to him, that they stay together.  
21 So when -- when Jim was being adopted by the Murphys without  
22 Donnie, that was a source of great consternation to Donnie.  
23 He really had a hard time with that apparently.

24 Q. Go ahead.

25 A. Let's see.



1 Q. Donnie actually was in placement there longer than  
2 Jim; is that right?

3 A. Correct. Jim went into the Murphy placement. He  
4 was attending the Fruitvale school where Mrs. Murphy taught  
5 and she saw him on the playground and mistook him for her son  
6 Matthew because of his stature, size, the way he looked. And  
7 she sought information about him. And in fact asked Ms.  
8 Tolar if she could adopt him or if she could take him in, saw  
9 that he might be a good companion for her son Matthew.

10 Q. Did Donnie ultimately get placed?

11 A. Yes, Donnie ultimately got placed with a man named  
12 Garth Looney who I understand had adopted two or three other  
13 children and who was able to provide Donnie with a wonderful  
14 and stable home environment. In fact, Donnie I believe still  
15 lives with Mr. Looney.

16 Q. All right. Do you know about when Jim -- how old  
17 Jim was when he went to the Murphy's?

18 A. I believe he was 12 when he went to the Murphy's.

19 Q. And what can you tell the jury about that, from your  
20 investigations?

21 A. Well, Jim's own perception was that it was the  
22 American dream, that it was a wonderful home, that they were  
23 able to provide him with everything that he could need or  
24 want, that he was very, very close to Mr. Murphy  
25 particularly. As time went on, he described his own

1 behavior. He said he began to drink and use drugs when he  
2 was 14 and that he embarrassed Mr. Murphy and disappointed  
3 him. He said that Mr. Murphy was a councilman or a city  
4 manager or somehow involved in the City of Edgewood and a  
5 public figure and that some of his own antics were kind of  
6 brushed under the rug because of Mr. Murphy's pull. But that  
7 in time his behavior was -- brought great shame to Mr.  
8 Murphy. He said --

9 Q. Mr. Tolar was also involved in politics and -- in  
10 Grand Saline, wasn't he? Wasn't he the mayor at one time?

11 A. I believe so, yes.

12 Q. Go ahead.

13 A. Jim said that -- that he became closer and closer to  
14 Mr. Murphy, and that that became a source of problems in the  
15 household because he was more like Mr. Murphy and enjoyed  
16 hunting and fishing and working on cars and that kind of  
17 thing while Matthew didn't enjoy those things so that in time  
18 it seemed as though his relationship with Mr. Murphy was  
19 stronger than Matthew's relationship with his own father.  
20 And ultimately the Murphys divorced, and Jim said that he  
21 blamed himself for that. He said it was his own fault. He  
22 said when they divorced, he chose to go with Mr. Murphy, and  
23 from that time on, that Ms. Murphy hated his guts and wanted  
24 nothing to do with him, that he sent her a picture of his  
25 daughter when she was born and Ms. Murphy sent it back.

1           Mr. Murphy told me in my conversation with him this  
2 morning, and I haven't been able to provide written notes  
3 because it was as I was leaving the house this morning that I  
4 was able to finally get in touch with him. He told me that  
5 Jim was -- was wrong, that while his behavior was  
6 disappointing and he told Jim that, that he never gave up  
7 hope for Jim. That Jim came there a quiet and withdrawn  
8 child, and that it was wonderful to watch him blossom in that  
9 home. He told me that he and Jim and Matthew did a lot of  
10 hunting and fishing together. He said that when Jim began to  
11 act out, that he would have talks with him and would tell him  
12 that he was disappointed in him. And Jim would say why don't  
13 you just spank me, that would be easier to take than a  
14 talking to. So it sounded like the relationship between them  
15 was in fact a very close and special one.

16           Q. And yet though Jim felt that any problems that came  
17 up were his fault?

18           A. Right.

19           Q. The divorce was his fault, problems were his fault?

20           A. Correct. And I asked Mr. Murphy if there was -- at  
21 all Jim's doing that the marriage broke up, and he said  
22 absolutely not. And in fact, that they had been divorced  
23 earlier for about five years and had been back together for  
24 four or five years before Jim and -- before Jim came into  
25 their home, but that the problems they had didn't have

1 anything to do with Jim. He said it was not altogether  
2 correct, that Jim's behavior had anything to do with the  
3 divorce, so --

4 Q. Okay. So from a child's point of view, would it be  
5 fair to say that as a little boy Jim felt abandoned by his  
6 own mother and family?

7 A. Yes.

8 Q. Then he went to the Tolar's. And whatever the  
9 problems may have been or whoever's fault they may have been,  
10 that's another situation where he's been dropped off at the  
11 orphanage basically?

12 A. Correct.

13 Q. And then the Murphy marriage failed, and Samantha  
14 Murphy was the woman who adopted him; is that right?

15 A. That's right.

16 Q. Did you ever talk to her?

17 A. No, I didn't.

18 Q. Did you try to?

19 A. No. I was given to understand that she was not  
20 going to be willing to talk to -- to people who might be  
21 associated with his defense, and so I didn't try. I talked  
22 with her daughter who kind of gave me some information about  
23 and corroborated Jim's version that Ms. Murphy won't have  
24 anything to do with Jim, that the fact that Jim chose to live  
25 with Mr. Murphy was the essence of that, that she never

1     forgave him for that.

2             Q.     This is a very acrimonious divorce, was it not?

3             A.     Yes, according to everyone that I talked with, yes.

4             Q.     While Jim was living there and blossoming, as Mr.  
5     Murphy told you, what was going on in the house at that time?

6             A.     As I understand it from -- from Matthew and from his  
7     older sister, Tracy Erwin, there was a great deal of fighting  
8     between Samantha and Bob Murphy. Jim did not tell me that,  
9     but Matthew himself told me that his parents fought all the  
10    time and that the police were called. I asked Mr. Murphy  
11    about that this morning, and he said regarding Jim, and I  
12    said or at all, and he said Jim didn't bring about those  
13    kinds of problems. So I didn't get clear in my mind whether  
14    the police did or didn't come out. According to Tracy, they  
15    did. Matthew told me that he finally actually hit his father  
16    in the face with his fist.

17            Q.     Matthew did?

18            A.     Yes, because of his father's assaults on his mother  
19    and that Jim saw that, that it knocked Mr. Murphy over. So I  
20    think there surely may have been more disharmony for a longer  
21    period than Jim Murphy gave me to understand. He didn't  
22    spend any time flushing that out, he just -- just focused on  
23    his own destructive contribution to the household.

24            Q.     And what else did Matt tell you about what he knew  
25    about Jim? Did he talk about anything Jim may have ever said

1 about his life at the Tolar's?

2 A. Well, yes, I asked him if Jim ever reported anything  
3 from the Tolars and he -- he gave me a great many anecdotes  
4 or incidents that Jim had told me. Told me about one  
5 incident that Jim told him about where the boys were -- Jim  
6 and Donnie were tied to a chair so the Tolar boys could hit  
7 them. He told me of them being locked out of the house and  
8 without food, of them being given different food from the  
9 food the Tolar kids could get, that they didn't get some of  
10 the treats and snacks that the Tolar kids got, that they were  
11 sometimes sent to bed without food for punishment. These  
12 were the things that he heard from Jim over the years that  
13 Jim was in their household.

14 Q. From the time Jim came at 12 and as the time marched  
15 on?

16 A. Yes.

17 Q. Did you learn anything about whether or not Donnie  
18 was ever left behind at all?

19 A. Donnie told me that he was. He told me that he was  
20 at a neighbor's when the Tolars were leaving to go somewhere  
21 and they locked up the house, leaving him locked out. He  
22 told me, as I said earlier, of being locked in the room and  
23 he said he tore the room up when he got locked in. In fact,  
24 Ms. Tolar affirmed that. She said he knocked holes in the  
25 wall. So they both seemed to be talking about some of the

1 same incidents.

2 I gathered that the Tolars thought of this as  
3 time-out, locking the kids in the room for punishment.

4 Q. Okay. Did -- how did Matt feel about Jim when they  
5 were living together as brothers?

6 A. I understand from Matt that they were -- that they  
7 were pretty close, that they were of the same age and that  
8 they got along well. I gathered that there were some  
9 differences and particularly when Jim began to do some acting  
10 out that they kind of went their separate ways. But he spoke  
11 generally very fondly of Jim.

12 Q. Did you find out whether or not the boys were  
13 dressed alike when Jim first came to live with the Murphys?

14 A. One of the pictures that Tracy Erwin provided me,  
15 and she provided me with a number of pictures, shows them  
16 dressed identically in suits and I understood that was at  
17 Easter and Jim looks younger than 12, so this must have been  
18 very early in the placement. And so -- and I do think there  
19 were times when they were -- Mr. Murphy specifically  
20 mentioned that this morning when I was asking him about Jim's  
21 recollection that he and Jim had more in common than he and  
22 Matthew did, and he mentioned specifically that Jim liked to  
23 wear jeans while Matthew likes to where Dockers and that  
24 there were those kinds of differences.

25 Q. Uh-huh. Okay. What were you able to learn, if

1 anything, about drinking habits and how they began while Jim  
2 was at the Murphy family?

3 A. Well, that's -- that's exactly when I understand  
4 that his drinking did begin, although I was given to  
5 understand that the children may have been given alcohol by  
6 Donnie Kines when they were young. In fact, Hope Abbott told  
7 me that when Donnie was 3, he was taken to the hospital -- to  
8 the emergency room. His dad had given him alcohol and had  
9 let him fall out of the back of a truck. So I understand  
10 that he may have had alcohol when he was very, very young,  
11 but there was surely a long period when he didn't. During  
12 the Tolar placement when he was 14, as I understand, he began  
13 to drink. And then he used some drugs during high school. I  
14 think he said he smoked marijuana all the way through high  
15 school.

16 Q. Okay. That reminds me of something. Did you learn  
17 in your investigation about the earlier life of these boys  
18 that Donnie Sr., while drunk one time, tried to teach Donnie,  
19 a 5-year-old boy, to drive a car?

20 A. Yes, I understood that he did, tried to teach him to  
21 drive at age 5 and as a result Donnie Jr. broke his thumb or  
22 hurt his thumb badly on the steering wheel, caught it on the  
23 steering wheel.

24 Q. Okay. Regarding the drinking, were you able to find  
25 any frame of reference for his drinking from any of the other



1 people that you talked to at that time?

2 A. It was really understated and general. I think that  
3 even when -- much later when Jim was living with his sister  
4 Tonya, she was not aware that he was drinking when he was.  
5 So it's my understanding that he may have kept it fairly  
6 hidden. And that when he got in trouble, it came to the  
7 forefront, but he may have been drinking without people  
8 knowing it for a long time. He certainly identifies himself  
9 as an alcoholic from that early age. I understood that he  
10 attempted to tell Ms. Murphy that he had a drinking problem  
11 when he was 15.

12 Q. And what was the result of that?

13 A. Apparently nothing.

14 Q. Did he talk to Bob Murphy about it?

15 A. I don't know.

16 Q. You don't know?

17 A. No.

18 Q. During that time, though, where he had a brother  
19 that he got along with and a father and a mother and a nice  
20 home where there were creature comforts provided, he was  
21 making good grades, was he not?

22 A. Yes.

23 Q. So to a large extent, except the alcohol problem, he  
24 was thriving early in that time, in that placement with the  
25 Murphys?

1 A. Yes, it would certainly appear on the surface that  
2 he was.

3 Q. What did Jim tell you about his relationships that  
4 would be -- other love relationships?

5 A. He said he had a girlfriend through two years during  
6 his high school years before he met Chelsea Willis, one  
7 special girlfriend.

8 Q. And that relationship has continued up until this --  
9 October of this past year; is that right?

10 A. With --

11 Q. Chelsea?

12 A. Oh, with Chelsea? Yes, certainly. Once he became  
13 involved with her, then that became his only love  
14 relationship from then on, as I understand it. They had a  
15 child together and for all practical purposes thought of  
16 themselves as married.

17 I talked with Chelsea Willis and with Mr. Murphy  
18 about that relationship.

19 Q. And what did you learn from them?

20 A. Well, from Mr. Murphy I learned that it was a  
21 volatile relationship and that Chelsea was a strong-willed  
22 and -- and perhaps stubborn person who -- who made her own  
23 contribution to some of their fights and he said she would  
24 readily admit that. He reported that there were certain  
25 things she wouldn't allow him to do. She wouldn't allow him

1 to come home drunk and that there were good times, there were  
2 special times, but that there was a lot of fighting. He told  
3 me that he hit her on five occasions. When I asked him about  
4 that, he said, "I'm just an alcoholic, it just got real bad,  
5 it eat me up, tore up everything I had." He said he went to  
6 Alcoholics Anonymous in Kaufman.

7 Let's see, he said he and Chelsea got together in  
8 1995, about 7 to 10 months after he was released from the  
9 Childress boot camp where he had gone as a result of an  
10 incident that occurred in his late high school years, age 17,  
11 and he has been with Chelsea more or less since that time.  
12 He said that she works at a lumberyard in Terrell, that she's  
13 always been a wonderful mother, a good person, and a very  
14 capable person. He said he never caused her to be  
15 hospitalized, but they had fought to the extent that the  
16 police were called out numerous times and that Chelsea had  
17 left him on several occasions.

18 Q. So he was candid with you about his part in those  
19 problems?

20 A. Yes, he was. He said that when he and Chelsea were  
21 separated, he really began to drink heavily. They broke up  
22 and they didn't get along anymore and he didn't want Alyssa,  
23 his daughter, to see the ongoing fighting.

24 And Chelsea herself told me a good deal about their  
25 relationship. She said she was never afraid of Jim, that she

1 couldn't imagine him doing anything severely violent. She  
2 said that she never hit him, but she would not back down when  
3 she felt she needed to say something. She would say whatever  
4 she needed to say. She -- let's see --

5 Q. Did she ever tell you that she threw a glass of tea  
6 at him?

7 A. Yes. I'm trying to remember who told me that. She  
8 did, or he did. I think he may have told me that she threw a  
9 glass of tea at him and it was full and that it hit him in  
10 the head. Donnie also told me that story, and I don't know  
11 whether he heard it from her, and he is friends with her, or  
12 whether he heard it from Jim.

13 She told me of a number of suicide attempts and  
14 about calling the ambulance when he would threaten suicide or  
15 attempt suicide, threaten, when he would say good-bye to them  
16 because he was planning on killing himself. And I'm sorry,  
17 she said that he never made a serious attempt. She said that  
18 she would call the ambulance when he would make the threats.  
19 She said that many times he tried seriously to sober up, that  
20 he would attend AA, but there was just too much on his mind.

21 She talked about the good times. She said that when  
22 Jim was sober and taking care -- that he was taking care of  
23 the children, both their child together and a child she had  
24 later, and that she'd had numerous kidney surgeries and that  
25 he took care of Alyssa and Brittany and did everything he

1 needed to do when she was incapacitated. She said she knew  
2 it was hard for a man to do such things, but he did  
3 everything, he washed clothes, cleaned the tub, and did,  
4 quote, everything in the world right, end quote, during those  
5 periods.

6 She said that Alyssa misses her daddy and thinks he  
7 works for Jesus. She said she didn't know how Alyssa got  
8 that idea, but she wasn't going to correct her. And she said  
9 she hoped Alyssa would be able to make up her own mind about  
10 him when she's 13 or 14 and old enough to know him.

11 Q. Did you learn anything about any psychiatric  
12 treatment that Jim had?

13 A. Yes, I did.

14 Q. What would that be?

15 A. He had a number of placements for psychiatric  
16 treatment and -- let's see, generally, I think, starting  
17 sometime after the age of 19. There was one time after the  
18 suicide attempt during which time he took somewhere between  
19 40 and 60 pills in an effort to commit suicide.

20 And then let's see, he was in Glen Oaks in  
21 Greenville twice he said because he couldn't control his  
22 mind. He was in the Andrews Center in Canton, Texas. He  
23 said he went there on his own because he knew something was  
24 wrong. He was having blackouts and he said his train of  
25 thought was messed up. He said he wasn't drinking at the

1 time, but he gets, quote, depressed like you wouldn't  
2 believe, end quote, and that he thought constantly of ways  
3 that he could kill himself.

4 He told about another suicide effort where he tried  
5 to shoot himself with a 12 gauge shotgun that had ammunition  
6 in it, that he racked it, got the bullet in it, but it didn't  
7 go off when he tried to shoot himself.

8 Q. Were you able to corroborate that with anyone?

9 A. I was never able to make contact with Randy Crow.

10 Q. With Randy Crow?

11 A. I tried to try as late last night, and have never  
12 been able to talk with him, but I understood that he was  
13 present when that happened.

14 Q. Okay.

15 A. He said he had been to Timberlawn twice, that he's  
16 been medicated with Effexor, Ativan, Sinequan, Tegretol,  
17 Seroquel, Haldol, Thorazine.

18 Q. What are those drugs for? Do you know?

19 A. Generally depression and -- and psychosis.

20 Q. And anxiety as well?

21 A. Yes. Yeah.

22 Q. And were you able to find out if he had taken some  
23 or other of those drugs through various times that he went to  
24 Glen Oaks and Oak Haven and Andrews Center and Timberlawn?

25 A. Yes. I think he's been on and off a number of

1 different drugs. He was on Tegretol after the Andrews -- or  
2 while at Andrews. And according to records, yeah, Librium,  
3 he's been on a number of medications. He apparently had  
4 hallucinations, and it wasn't clear to me whether those were  
5 always associated with delirium tremens, with withdrawal, or  
6 whether they were visiting upon him of their own accord, but  
7 there were times when he would get on a table with snakes  
8 lashing at his boots. He said he could hear them, feel  
9 them. He was sure they were there, called the police.

10 Q. That could be DT's, couldn't it?

11 A. Could be, yes.

12 Q. And was there drug use as you were able to discover?

13 A. Yes, I think there was, according to his own  
14 acknowledgment, in high school, but I think alcohol was  
15 certainly his drug of choice. And he described himself as  
16 being in kind of last stages of alcoholism. He said that the  
17 treatment staff had referred to him as a wet head at various  
18 times, so I think alcohol was certainly his drug of choice.

19 Q. Now -- so you've looked at all these medical  
20 records, you looked at a statement that he made to the  
21 police -- more than one in fact, did you not?

22 A. Yes.

23 Q. You looked at the adoption records for he and  
24 Donnie?

25 A. Yes.

1 Q. And the police report?

2 A. Yes, ma'am.

3 Q. You've talked to these numerous family members?

4 A. Yes.

5 Q. What else can you tell the jury that might aid them  
6 in knowing what would be an appropriate thing to do in this  
7 case regarding all of these family issues?

8 A. Well, essentially I think a picture emerges for me  
9 of a person who had some intermittent violence associated  
10 with drinking, but who is generally described by people as a  
11 warm, outgoing, loving kind of person, who from a very early  
12 age began to perceive himself as unlovable, unworthy of other  
13 people's love. Just time after time after time he lost the  
14 people that he was close to, in some cases by clear  
15 abandonment, such as Hope Abbott or the Tolars. In other  
16 cases by what for a child may seem like abandonment, the  
17 death of his grandparents, the drinking and then death of his  
18 father, being separated from Donnie. Those were all losses  
19 that a child of his age would have had a hard time trying to  
20 process. And inevitably he turned -- turned it in on himself  
21 that there was something essentially unlovable about him.  
22 And I think from the time that he was old enough to take  
23 action, he began to try to do himself in, in one way or  
24 another, and the drinking seemed to be a very  
25 self-destructive vent, acting out in the placement with the



1 Murphys was quite self-destructive.

2 Q. With the Tolars or the --

3 A. The Murphys, when he began to act out.

4 Q. Oh, when he got in trouble?

5 A. Yes.

6 Q. What did you find out about that?

7 A. Well, I think just that, that he -- that he was  
8 probably going through the kind of adolescent rebellion that  
9 many kids go through, but that it had a lot more drive or ump  
10 to it, fueled by the alcoholism and his self-loathing.

11 Q. And then the breakup of that marriage?

12 A. Yes, ultimately. When Mr. Murphy spoke of the  
13 crime, he talked about Ms. Bertie Cunningham in almost a  
14 reverent or awed way. He reiterated again and again and  
15 again his self-loathing, his feeling that he's just the  
16 spitting image of his father, the drunk, that he doesn't --  
17 he doesn't imagine how anybody would be able to forgive him.  
18 Generally he was extremely self-effacing, made no effort to  
19 redeem himself. He told me that there would be people who  
20 would tell me that they cared deeply about him and that Randy  
21 Crow, for example, loved him like a father would love his  
22 son. But notably absent is his capacity to accept himself,  
23 and I think that was absent before this happened and was one  
24 of the contributing factors that he was just on a  
25 self-destructive vent. He told me he was on his way to kill

1 himself. He was going to say good-bye to his daughter the  
2 next morning, and go out and shoot himself at the lake.

3 Q. Now, he did -- you read the statements that he made  
4 to the police, did you not?

5 A. Yes, I did.

6 Q. And he said it was an accident, didn't he?

7 A. Yes, he did.

8 Q. Could that be considered as self-effacing at all?  
9 Or a denial of responsibility? Or I suppose it could be  
10 true, but the jury has convicted him of capital murder, so  
11 what can you add to that, if anything?

12 A. I really don't know. In the way that he construes  
13 it, I guess you can say that he -- it's a way that -- that he  
14 can manage. He cannot conceive himself doing something like  
15 that to a sweet old woman. And I think he construes it in a  
16 way that makes it comprehensible to him, that this happened  
17 at his hand. But in the same breath, he says again and again  
18 that he's not to be excused. So I didn't -- I didn't take it  
19 that he was trying to convince me of anything or sell me a  
20 bill of goods about it. I think he was telling me how he  
21 honestly sees it and -- and recalls it.

22 Q. Do you know anything about that period of time when  
23 this crime occurred as far as his life circumstances?

24 A. I understand that he perceived his relationship with  
25 Chelsea to be beyond repair, and he was living with his

1 sister Tonya and her children in Dallas and working. And he  
2 believed that nobody in that household or in his life then  
3 knew of him being an alcoholic. And he was the mentor, he  
4 felt, for some of his daughter -- his sister's children's  
5 friends who came to him for guidance and so forth. And he  
6 felt close to those kids and attached to those kids, but I  
7 think he perceived himself to be directionless and aimless  
8 and not worth living and made another of his many efforts to  
9 plan to kill himself.

10 Q. Are you aware of any attempts he made to kill  
11 himself after Ms. Cunningham was killed? Did you talk to  
12 Tonya Thorp about Jim, his sister Tonya?

13 A. I did talk with her briefly, and I understand he  
14 left a note for her. I -- I mean, he told me that what he  
15 intended to do then was to go out to Wills Point, say  
16 good-bye to Alyssa, his daughter, and then go out to the lake  
17 to kill himself. He told me that he knew he couldn't go to  
18 Alyssa drunk, and he went to a friend's to sleep off the  
19 drinking that he had been doing. And it was while he was at  
20 that friend's that he was arrested. He told me that he had  
21 made no effort to cover his tracks in any way in terms of  
22 signing his own name when he used Ms. Cunningham's credit  
23 cards to buy the kids gifts. The police asked him why he  
24 didn't, and he said I didn't intend to get away with  
25 anything, I -- I wasn't planning on living.

1 Q. What have you learned about his relationship with  
2 his daughter Alyssa?

3 A. Well, according to him, he -- he couldn't tolerate  
4 her coming and visiting him through the glass, as he put it,  
5 in his cell and that he had his last telephone contact with  
6 her in September. And I think that Chelsea corroborated  
7 that. I understand that he had a close and loving  
8 relationship with her before, according to both himself and  
9 Chelsea.

10 Q. Do we have a picture of him with Alyssa over here?

11 A. Let's see, this is him.

12 Q. Now, that's a photograph that has Jim and Alyssa and  
13 Chelsea's other daughter Brittany?

14 A. Brittany, right.

15 Q. I think I've overlooked a couple of things that you  
16 said about some of the testing, Dr. Connell. When you were  
17 doing examination of elevations in that testing --

18 A. Yes.

19 Q. -- I believe you stated in your report, which I'll  
20 get a copy for us to give the jury, suggested that his  
21 responses were not careless or random. This is on page 10 of  
22 your report.

23 A. Right.

24 Q. What -- what could you add to that to explain his  
25 mental state and what was going on with him?

1       A.    Well, what I was looking at there was F and F back.  
2   This is the fake bad scale on the MMPI-2, the scale that  
3   shows elevations if the person is just subscribing to every  
4   symptom that comes down the pike, adolescents often do that,  
5   that kind of sense that everything is awful, my life is  
6   awful, nobody understands me, life is not worth living.  
7   Looking at the front half of the test and the back half of  
8   the test, he subscribed to more and more negative symptoms as  
9   the test went on and we -- we look at that to kind of get a  
10   sense of how the person is conducting himself through the  
11   process of taking the test.  Sometimes when a person gets  
12   fatigued, they -- their defenses relax and they start  
13   admitting to problems that they were before trying to gloss  
14   over or deny.  And so -- and then sometimes they just are  
15   responding carelessly as they get tired.  And so I was  
16   looking to see if one of those things was going on, if he was  
17   just getting careless and just saying true to everything.  
18   And what I found when I looked at the symptoms that actually  
19   were subscribed to in the back half of the test, it seemed to  
20   me that these were exactly the symptoms he had been telling  
21   me about on interview.  He -- for example, one of them was I  
22   tried to commit suicide in the past.  And he said true.  
23   Another one, I've had history of some seizures.  And he said,  
24   true.  And he had told me during detox he sometimes had  
25   seizures.  I suffer from mental confusion.  And he said,

1 true. And in fact he had told me on interview of his  
2 difficulty keeping his mind straight and feeling like his  
3 thoughts were derailing at times. Hearing voices without  
4 knowing their source. Can't keep his mind on anything.  
5 Often feels as if things are not real. Has had some strange  
6 and peculiar thoughts, strange and peculiar experiences. He  
7 feels that there's something wrong with his mind. These were  
8 all consistent with what he had told me on interview and what  
9 the mental health records showed he was reporting when he was  
10 going to the mental hospitals over the years. Feeling that  
11 strangers are looking at him critically. Sure he's being  
12 talked about. Feels he has enemies who really wish to harm  
13 him. Acknowledging that he has at times been seen as  
14 hot-headed, at times feels like smashing things. His future  
15 feels hopeless to him. He feels he's not as good as other  
16 people. He feels he's made serious mistakes in his life.  
17 Life is a strain for him much of the time. He feels useless,  
18 feels like giving up hope. He thinks he's no good at all.  
19 He readily acknowledged his alcohol abuse and having been in  
20 trouble with the law. So all of these things are things that  
21 the history bore out. It certainly did not seem to me like a  
22 person who had lived a perfectly normal life was coming in  
23 and sitting down at this test and trying to look crazy.  
24 Everything that he reported to me on the test were things  
25 that were corroborated at other places in the history, and

1 that's an important distinction when you think about either  
2 in defense of a crime, a person claiming insanity or in a  
3 sentencing phase a person claiming, you know, an abuse  
4 history or mental health history to try to get the law to go  
5 easy on him. These things said to me that Mr. Murphy was  
6 being honest with me, that everything he was reporting to me  
7 was corroborated by the history I gathered.

8 Q. And what did you learn about his view of himself in  
9 relation to other people? How does he -- is he trusting of  
10 other people or not?

11 A. Not at all, and doesn't feel that he's as good as  
12 other people or what other people are worth.

13 Q. His attachments, are they -- are they strong or weak  
14 or superficial or --

15 A. I think he has some fairly strong attachments. His  
16 attachment to Chelsea seems to me like it's been a strong  
17 one. You can also look at it from another angle and say he  
18 let her down. The same would be the case with Mr. Murphy.  
19 He yearns for a reconciliation of that relationship. He --  
20 the fact that Mr. Murphy in his eyes finally did give up on  
21 him is a source of great pain for him. So I think there are  
22 attachments. He can't bear the thought of visits with some  
23 of his family members because of the pain.

24 Q. Because of the strong attachment he feels?

25 A. The attachment he feels and the shame and the

1 disgrace that he feels he has brought by his behavior and the  
2 disgrace of being in the situation that he's in. He said  
3 that it was -- it was very difficult for him to visit with  
4 his sisters and his mother because of those things.

5 Q. And from your MCMI-III test results, did you find  
6 that he was undergoing acute major depression?

7 A. That was the suggestion from the test results,  
8 right, characterized by some agitation and some erratic  
9 thinking, not just deeply depressed, but deeply depressed  
10 with an agitated edge, shifting between self-deprecation and  
11 despair, thoughts of suicide and hopelessness, futility, to  
12 occasional outbursts of bitter discontent or irrational  
13 demands. I think from looking at the jail records there were  
14 some times when he had outbursts at staff. He told me that  
15 he was having difficulty of getting his medication with any  
16 kind of regularity once the jury selection procedure started  
17 because the med cart comes around at 9:00 in the morning and  
18 he was being brought over here around 6:00 or 6:30 so he  
19 wasn't getting his medication in the usual way.

20 His mother called me at one point and said that he  
21 wasn't being given it at all for a few days and that he was  
22 really getting increasingly agitated. I could see that as  
23 well on the occasions that I saw him. It was as though he  
24 was much more fragile and in a state of ill health, mentally,  
25 compared to how he was the first two times I saw him when he



1 was being medicated regularly.

2 Q. You also said I believe that the MCMI-III suggested  
3 his bouts of alcoholism could be partly due to his  
4 frustration and disappointment in his own life; is that  
5 right?

6 A. Certainly, I think that's -- that's precisely what  
7 was going on. I think he probably had a genetic  
8 predisposition or vulnerability to addiction, but that what  
9 fueled it, what drove him was his identification with his  
10 father as seeing himself as sort of nothing but a drunk, not  
11 worth anything, and trying to find some place where he felt  
12 better and he got that temporarily from drinking, apparently.

13 Q. What patterns have you noticed from this testing  
14 about his behavior?

15 A. Well, I think he's unpredictable, he's moody, he's  
16 impulsive. All those behaviors are intensified when he's  
17 drinking. Brooding resentment that may break out of control  
18 from time to time. It sounds like he could maintain an even  
19 keel for a period of a month or two or sometimes three  
20 months, working, staying sober, going to AA, maybe being in  
21 outpatient treatment, but then something would set him off  
22 and he would go on another binge, get aggressive, angry,  
23 loud, belligerent, and things would spiral downward and out  
24 of control.

25 Q. Did you find anything from your testing or anything

1 else about any kind of emotional trauma that he had early?

2 A. Well, yeah, I mean, I think the history very clearly  
3 tells us that, that the resent -- the resentment and the  
4 anger that were driving his behavior had to do with these  
5 early loses and disappointments. They echo through his whole  
6 life from the observation of his father's abuse of his  
7 mother, his sense that his mother abandoned him, that she  
8 chose to retrieve some of his siblings but further abandoning  
9 by leaving him in the institution, the reported abuse that  
10 was perpetrated on him by his first adoptive father and --  
11 which you'll remember he didn't tell me about, but his  
12 brother Donnie did. The eventual disruption of his second  
13 adopted family, the marriage breaking down, and him feeling  
14 responsible for it, feeling like just being there caused  
15 things to fall apart, so that he seemed very early in his  
16 life to develop the theory that he was unloved and  
17 unlovable. That his father's alcoholic and abusive patterns  
18 were indelibly engraved in his own life script. That he was  
19 going to be reliving his father's life, that whoever he  
20 touched or loved, he lost. And I imagine that he drank to  
21 drown out those feelings.

22 Q. So some of that could be self-medication, as well as  
23 a genetic propensity?

24 A. Yes.

25 Q. Were you ever able to find anything about any ADD

1 that he might have had early on?

2 A. He said he was diagnosed with a ADHD. In his school  
3 records I did not see that -- I didn't find that. I saw sort  
4 of average performance to sometimes low average performance  
5 which, you know, I think at the -- at the end of the Tolar  
6 placement, for example, but then increased or improved  
7 performance. And according to Mr. Murphy, his grades stayed  
8 pretty high until his senior year. I think there were  
9 indications of some hyperactive behavior. Donnie said that  
10 Jim would rock himself to sleep at night, and he said they  
11 slept in bunk beds and he would get mad because of his  
12 rocking behavior and he only realized later that Jim probably  
13 couldn't help it. Ms. Tolar mentioned that as well, his  
14 rocking behavior.

15 Q. What do you mean by that? What's the rocking  
16 behavior?

17 A. I would think of it as having energy and no place to  
18 put it or trying to self-suit, just laying in bed and kind of  
19 rocking. Mr. Murphy said that even at the age of 12 when  
20 they got him, that he would roll his head to go to sleep. He  
21 couldn't just lie still. He would always every night would  
22 be rolling his head until he felt asleep. So it sounds to me  
23 like there was a kind of driven quality about some of his  
24 behavior. If you see somebody constantly needing to fidget  
25 or to be moving all the time, one of the things that you

1 start to think about is the possibility of kind of a  
2 hyperactive element. But generally speaking, I don't think  
3 there were strong indications of ADHD and the history that I  
4 read. People described him as a mellower, quieter child, not  
5 as a rambunctious child, the way an ADHD kid would often be  
6 described.

7 Q. And the way that Donnie apparently was?

8 A. That's correct.

9 Q. Were you aware from Chelsea that Jim still was  
10 rocking himself to sleep, even at the time that he was living  
11 with her?

12 A. I don't remember becoming aware of that from her.

13 Q. Did you come up with a prognosis of your own about  
14 Jim?

15 A. Well, I wasn't asked specifically to do a risk  
16 assessment or assessment of future dangerousness, but I  
17 clearly was interested in trying to understand how -- how  
18 this violent act occurred in a life that was otherwise  
19 without indication of that level of violence.

20 MR. DAVIS: I'm going to object. At this time  
21 if we're going to go into an issue that I've been told we're  
22 not going to go into --

23 THE COURT: Sustained.

24 Q. (By Ms. Little) You did -- you did want to  
25 understand though as much as you could; is that right --

1 A. That's right.

2 Q. -- Dr. Connell?

3 Did you also in trying to prepare your -- this  
4 presentation for the jury talk to Hope Abbott?

5 A. Yes, I did.

6 Q. How long did you talk to Hope?

7 A. I talked to her on three occasions by telephone and  
8 on one occasion in person and probably altogether somewhere  
9 in the neighborhood of an hour.

10 Q. What conclusions did you draw about Ms. Abbott when  
11 you talked to her?

12 A. Well, I mean, I wasn't doing an assessment of her.

13 Q. I understand.

14 A. But was certainly trying to understand her  
15 contributions and communications with Jim and how those had  
16 affected his life. I understood from her that she thought  
17 placing the children in adoption would be giving them  
18 opportunities. She herself was adopted, and apparently by a  
19 very loving family. And she anticipated that she was going  
20 to be providing her children with things that she couldn't  
21 provide them by placing them for adoption. And I understand  
22 that she was up against tremendous difficulties in those  
23 years when she placed the children at Buckner, suffering  
24 regular severe abuse and unable to protect the children and  
25 felt that she was doing the right thing. And I understand

1 then that she didn't have any contact with Jim again until  
2 her daughter's wedding. And once she did have contact with  
3 him, she remained in contact with him as best she could. She  
4 said that she had not gone to visit him because she had some  
5 health difficulties that made it difficult for her to do that  
6 kind of thing. And that she had provided monies for him for  
7 commissary when she could. She said that it seemed  
8 incredibly expensive, and she verified that things did in  
9 fact cost as much as Jim said they did and that she tried to  
10 send around 75 to a hundred dollars a month for commissary  
11 while he was here.

12 Q. Okay. Did you talk to her about any suicide  
13 attempts or commitments or psychiatric treatments?

14 A. Yes, she talked about the suicide attempt that  
15 resulted in her trying to get him placed. And she talked  
16 about a psychiatrist -- she called him by the name of, I  
17 think she said Bob Gold -- refusing to hospitalize Jim on one  
18 occasion. And in her training as a nurse, I think she  
19 understood some of what he needed and tried to get -- get him  
20 plugged into treatment, but was frustrated in her efforts.  
21 By the same token, she was kind of trying to oversee his  
22 medication issues while he was here and was also experiencing  
23 some frustration with that. She said the 1997 suicide  
24 attempt when he overdosed on Benadryl, that he was  
25 hospitalized in Kaufman, and she said that he would work

1 and -- I'm sorry, that was his father, I think. The next  
2 part.

3 Q. Did she talk to you about what Jim was like as a  
4 little boy when he was still with her?

5 A. Yes, she did.

6 Q. What did she relate to you about that? I think it's  
7 on page 16.

8 A. She said when the children were young, let's see --  
9 I'm sorry, my pages are not numbered the way yours are. Mine  
10 are kind of all over the place. Okay. She said that he was  
11 a very precocious, funny child who always smiled. She said  
12 if she lowered her voice and got gruff with him, it broke his  
13 heart. She said the other two boys would put him up to  
14 things, such as throwing rocks or using a slingshot and that  
15 if she got on to him, he would cry.

16 Q. And did she express to you that she was aware of  
17 what the boys perceived as abuse on the part of the Tolars?

18 A. She did. She said that she didn't know anything of  
19 any sexual abuse. And I asked her if there was ever any  
20 sexual abuse. She said, no. If she had known for one second  
21 that such a thing would have happened, she said you'd be  
22 taking notes on me. She talked about the Tolar family,  
23 whipping the children with bed slats, locking them in the  
24 house, leaving them without food at times, about Donnie  
25 tearing up the room on one occasion. She cried as she talked

1 about that and said if she had known what they were going to  
2 suffer in adoption, she never would have left them there.  
3 And how bad she felt about in her part in putting them  
4 through that.

5 Q. Now, Ms. Tolar also related to you, didn't she, that  
6 Jim and Donnie knew that the parents didn't want them?

7 A. She said that's how they represented why they were  
8 in adoption regularly, that they always said their mom didn't  
9 love them, didn't want them.

10 Q. How many different placements as an estimate could  
11 you come up with that Jim went through himself from the time  
12 he was -- with his real parents and then he moved a number of  
13 times?

14 A. Well, if you count the times that he was with his  
15 grandparents, with at least his mother out of the home and  
16 his father for all practical purposes out of the home, there  
17 would be the two placements with his biological family and  
18 then three formal placements. There was the foster home in  
19 Fruitvale, what he refers to as a foster home. I couldn't  
20 find much information about that. I'm not sure whether he's  
21 confusing the shelter placement with the foster placement or  
22 in fact whether there was --

23 Q. If it was a placement?

24 A. Yeah, I don't know that. And the Tolars and the  
25 Murphys, so five that I know of, possibly six.



1 Q. Okay. And when you talked to Tonya about Jim, when  
2 was it that you talked to her?

3 A. Yesterday.

4 Q. Just yesterday?

5 A. I talked with her briefly before by telephone, but  
6 principally about some logistics issues regarding her  
7 father's death.

8 Q. And did she tell you that Donnie Sr. was verbally  
9 abusive of the children?

10 A. She did, yes. Oh, in fact, I'm sorry, I have a  
11 conversation with her about -- in last week, I think it was,  
12 and she gave me that information. She said that he would  
13 call them -- my pages are not numbered and I'm sorry I'm not  
14 looking. Since I'm going to be quoting, I want to be exactly  
15 correct. I may have another copy of it.

16 Ms. Little, I'm sorry --

17 MS. LITTLE: May I approach the witness, Your  
18 Honor.

19 THE COURT: You may.

20 Q. (By Ms. Little) Let me ask you to look at this  
21 which is a part of the report you provided to me; is that  
22 right?

23 A. Right.

24 Q. I'm on this page here, if you'll just glance at  
25 that.

1 A. Okay.

2 Q. Okay. When you talked to Tonya, how did -- what  
3 kind of discipline did she indicate, besides what we already  
4 know about, beating up of Hope and those things, what was the  
5 verbal abuse that she related to you?

6 A. She said that in addition to belt whippings, her  
7 father would say "you little shit," or "goddamn it, you  
8 little bastard," to the children, that there was definitely  
9 verbal abuse all through their childhood.

10 Q. And did she compare Donnie and Jim to you?

11 A. She did. She said that Donnie was the rambunctious  
12 one, the rascal, and that Jim was well-behaved and that if  
13 anybody would have expected anything bad like this to have  
14 happened, it would have seemed more likely that Donnie would  
15 have gone in that direction than Jim.

16 THE COURT: Anything further?

17 MS. LITTLE: I believe not. Thank you, Dr.  
18 Connell.

19 THE COURT: Take a short recess.

20 THE BAILIFF: All rise.

21 (Jury excused from courtroom.)

22 THE COURT: Counsel, we'll take a break until  
23 11:30 and then --

24 Sam, what time is lunch?

25 THE BAILIFF: It's supposed to be 12:00.

1 THE COURT: Then we'll break for lunch.

2 (Recess taken.)

3 THE BAILIFF: All rise.

4 (Jury returned to the courtroom.)

5 THE COURT: Jury is returning to the courtroom  
6 at this time.

7 Jurors may be seated.

8 Mr. Murphy, counsel, visitors in the gallery, you  
9 may be seated.

10 MS. LITTLE: Your Honor, before I pass Dr.  
11 Connell for cross, I'd like to offer Defendant's Exhibit  
12 Number 41 for all purposes, the Curriculum Vitae for all  
13 purposes.

14 (Defendant's Exhibit No. 41 offered)

15 MR. DAVIS: No objections.

16 THE COURT: Admitted.

17 (Defendant's Exhibit No. 41 admitted)

18 THE COURT: You may proceed.

19 MR. DAVIS: Thank you.

20 Cross-Examination

21 By Mr. Davis:

22 Q. Dr. Connell, we've met before this morning, right?

23 A. Yes, sir, we have.

24 Q. As a matter of fact, I guess the first time that we  
25 met is when you came over to testify on behalf of Robert

1 Wayne Harris here in Dallas County, wasn't it?

2 A. I think that's right.

3 Q. Robert Wayne Harris, you testified on the same issue  
4 of mitigation as you testified on behalf of Jedidiah Murphy,  
5 correct?

6 A. That's correct, yes.

7 Q. As you recall, Robert Wayne Harris is the person  
8 that killed five coworkers at the Mighty Fine Car Wash in  
9 Irving --

10 MR. BYCK: To which we'll object, Your Honor.  
11 This is totally irrelevant.

12 THE COURT: Objection is overruled.

13 Q. (By Mr. Davis) Robert Wayne Harris is the  
14 individual, is he not, who killed five coworkers -- shot and  
15 killed them last year?

16 A. That's correct.

17 Q. And the testimony showed in that case in addition to  
18 that that some months earlier he had taken a young woman,  
19 kidnapped her and shot her, and then dumped her in a field in  
20 Grand Prairie or Irving, hadn't he?

21 A. Yes, sir.

22 Q. Now, as I understand in this matter, Dr. Connell,  
23 you were asked to look at and examine possible mitigating  
24 circumstances, right?

25 A. Yes, sir.

1 Q. And I guess with that regards, it's important to try  
2 to gain information from as many sources as you possibly can  
3 that might aid you, correct?

4 A. Yes, that's right.

5 Q. And you did review some records and you have talked  
6 with some individuals, but let me just ask you, have you ever  
7 looked at any records from the Van Zandt County Community  
8 Counseling Center?

9 A. I have looked at records from the Van Zandt  
10 Community something center. Let me just get over there and  
11 see. No, I haven't. These are from the Van Zandt County  
12 Children's Shelter Board, so, no, I haven't.

13 Q. Have you ever looked at any records from Doctor's  
14 Hospital in New Boston?

15 A. No, I don't think so.

16 Q. Or the Wadley Regional Hospital in Texarkana?

17 A. No, sir.

18 Q. Have you ever looked at any records from a Dr.  
19 DeHaan in Texarkana?

20 A. No, sir.

21 Q. St. Michael's Hospital in Texarkana?

22 A. No.

23 Q. Dr. Vandiver in Kaufman?

24 A. No, I don't think so.

25 Q. Now, the people that -- and again, you've talked

1 about the circumstances of this offense to this jury, but  
2 have you made any efforts to talk with any member of the  
3 Garland Police Department?

4 A. No, sir, I have not.

5 Q. Have you made any effort to talk with any member of  
6 the Van Zandt County Sheriff's Department?

7 A. No.

8 Q. Wills Point Police Department?

9 A. No, sir.

10 Q. Terrell Police Department?

11 A. No, sir.

12 Q. You've talked extensively about the defendant's  
13 medical history, but have you made any effort to talk with  
14 any treating physician that this person has seen in the past?

15 A. No, I didn't.

16 Q. Have you talked with any of the doctors or  
17 counselors that talked with him in any of these facilities  
18 that he's been in over the years?

19 A. No, I haven't.

20 Q. You talked a little bit about his activities in the  
21 jail. Have you made any efforts to interview any Sheriff's  
22 deputies or detention service officers?

23 A. No, I haven't.

24 Q. Have you talked with any other inmates?

25 A. No.

1 Q. Have you talked with any jail nurses about him?

2 A. No, I have not.

3 Q. Have you talked with an individual by the name of  
4 Bill Parker?

5 A. No, I have not.

6 Q. Did you make any effort to talk with a Sherryl  
7 Wilhelm?

8 A. No, I didn't.

9 Q. Margie Ellis of Wichita Falls?

10 A. No, sir.

11 Q. Did you ever attempt to talk with a Mandy Kirl?

12 A. No, I didn't.

13 Q. Or Jeanne Evans?

14 A. No.

15 Q. As I understand with regards to Samantha Murphy, you  
16 were just told she wouldn't talk with you. You didn't make  
17 any effort to talk with her?

18 A. That's correct.

19 Q. You've talked extensively about the alleged abuse  
20 that happened in the -- in the Tolar home. Your primary  
21 reason for contacting Celeste Tolar was to get some  
22 photographs from her, wasn't it?

23 A. Yes. I also wanted to interview her, but I -- but I  
24 wanted photographs as well.

25 Q. All right. And so you made no efforts whatsoever,

1 did you, to talk with Celeste Tolar about any alleged abuse  
2 that happened in her home with regards to either Donnie or  
3 Jim Murphy?

4 A. I didn't ask her any questions that included the  
5 word "abuse." I asked her about discipline.

6 Q. You met Terry Tolar, didn't you?

7 A. Yes, I did.

8 Q. At the time that you met Terry Tolar, Dr. Connell,  
9 you knew that allegations were being made that he abused,  
10 either physically, psychologically, or sexually abused the  
11 defendant in this case, didn't you?

12 A. Yes.

13 Q. And yet you made no effort at all to talk with him  
14 about that issue, did you?

15 A. Correct.

16 Q. You knew this man was being alleged to be an abuser,  
17 those charges were being made against him, and yet you didn't  
18 give that man a single opportunity, did you, to answer that  
19 charge and address that charge with you, did you?

20 A. No, I didn't.

21 Q. So instead you decided to take as your own only  
22 sources for that alleged abuse the word of this defendant  
23 down here charged with capital murder and his brother Donnie  
24 Tolar, correct?

25 A. Yes, in terms of eyewitnesses to it, that's correct.



1 Q. So neither Ms. Tolar or Mr. Tolar were given the  
2 opportunity to answer those charges to you, were they?

3 A. Well, when I asked Ms. Tolar about discipline, I  
4 felt that she did touch on the kinds of discipline that were  
5 being described that you characterize as abuse.

6 Q. Well, she certainly didn't mention any sort of abuse  
7 in that home, did she?

8 A. Again, I guess it depends on how you look at the  
9 things that she -- that she mentioned. Some people would  
10 consider it abusive to discipline until your strength gives  
11 out.

12 Q. Discipline until your strength goes out?

13 A. Gives out. I think those were the words she used.

14 Q. I know they're words, but you take to that mean that  
15 she's implying that she used abusive behavior towards these  
16 boys?

17 A. Well, as I said, I think there are some people who  
18 would consider discipline to be abuse if it -- if it saps an  
19 adult's physical strength. If we're talking about whipping  
20 until you don't have the strength to whip anymore, for  
21 example, I think there are people who would call that abuse.

22 Q. Ms. Tolar never did say that she whipped these boys  
23 until her strength went out, did she?

24 A. She said she disciplined until her strength gave  
25 out.

1 Q. Did she ever say that she put a hand on these boys,  
2 such as whipping them or beating them until her strength went  
3 out, Doctor?

4 A. She didn't say she put a hand on them, and she  
5 didn't say she whipped. She said she disciplined until her  
6 strength gave out.

7 Q. What she said is she had five boys there to try to  
8 discipline and at times she got too tired to handle the  
9 situation herself so she waited for her husband to come home;  
10 isn't that true?

11 A. I suppose you could look at what she said that way.  
12 I didn't -- I didn't hear it that way, but I suppose you  
13 could.

14 Q. The people that you've talked with, the family  
15 members certainly are sympathetic toward the defendant,  
16 aren't they?

17 A. Not wholly. Donnie, for example, when I talked with  
18 him, shared some real, I guess, mixed feelings about -- about  
19 whether Jim should have any sympathy at all for what he did.

20 Q. Well, Donnie doesn't want him to die, does he?

21 A. In the end I think he -- he iterated to me that he  
22 didn't. I didn't hear it stated terribly clearly.

23 Q. Well, certainly his mother doesn't want to see him  
24 die?

25 A. Correct.

1 Q. Neither does Tonya Thorp.

2 A. I think that's right.

3 Q. Matt Murphy who you talked with, what, yesterday?

4 A. Yes.

5 Q. He doesn't want to see him die, does he?

6 A. No, I believe not.

7 Q. And these were the primary sources for family  
8 histories, abusive histories, trying to get these collateral  
9 sources to try to corroborate this defendant's history to  
10 you, right?

11 A. They were some of the sources, yes.

12 Q. Let's -- let's talk a little bit about the abuse,  
13 first of all, that allegedly happened in the Tolar home.  
14 Again, the only eyewitness accounts that you have because you  
15 chose not to talk with the Tolars is Donnie and Jim, correct?

16 A. That's correct.

17 Q. Do you think it happened? Do you think that they  
18 were abused in that home?

19 A. I don't know that I have enough information to know,  
20 and I -- I don't think that Jim, for example, characterized  
21 it to me as abusive. It does sound to me as though there was  
22 fairly severe discipline. I would doubt that the kids ever  
23 had marks on them, and some people consider that kind of the  
24 threshold for physical abuse. I -- I certainly gather that  
25 there was a sense of a difference in how the two boys were

1 treated compared to the Tolar boys. And I think that in  
2 child welfare standards that's generally considered to be  
3 emotional abuse, so it certainly does sound as though that  
4 may have happened. I don't have a real clear sense other  
5 than that the boys themselves felt in the end unloved and Ms.  
6 Tolar essentially affirmed that their patience just simply  
7 wore out with these kids.

8 Q. Do you consider Donnie Tolar to be a credible source  
9 for information about what happened in that Tolar home?

10 A. Not altogether. I don't know that any child is an  
11 utterly reliable source for periods of childhood and  
12 particularly when they are emotionally charged.

13 Q. Well, you know, for instance, you talked to Garth  
14 Looney about Donnie, didn't you?

15 A. Yes, sir.

16 Q. This source -- one of the two sources -- eyewitness  
17 sources. And as a matter of fact, isn't it true that Garth  
18 Looney who Donnie has lived with for several years stated to  
19 you that Donnie has severe anger problems and is actually  
20 abusive toward him?

21 A. Yes, sir.

22 Q. Which would be consistent with a history that Donnie  
23 was abusive towards the Tolars and that they were unable to  
24 control him in their home?

25 A. It might be consistent with that. It might also be

1 consistent that the way Donnie had learned to interact with  
2 other people was through violence, learned it from his own  
3 father, possibly learned some of that from the Tolars. I  
4 don't know that I could necessarily conclude exclusively that  
5 it would mean that he was abusive to the Tolars. It could  
6 mean just the opposite.

7 Q. And as a matter of fact, Garth Looney told you when  
8 you interviewed him that he needs to get rid of Donnie, but  
9 he doesn't know where to send him. He's trying to get him  
10 out of his home, isn't he?

11 A. That's what he said, yes, sir.

12 Q. And as I understood your testimony, correct me if  
13 I'm wrong, but you said that one indication to you was the  
14 fact that these boys very quickly after they got back to the  
15 shelter started behaving better, starting mellowing out in  
16 their behavior, correct?

17 A. Yes, sir, and their grades improved.

18 Q. You stand by that testimony, Doctor?

19 A. Yes, sir.

20 Q. I know that you've looked at the records from the  
21 Children's Shelter Board in Van Zandt County, haven't you?

22 A. Yes, I have.

23 Q. For both Jim and Donnie Tolar, right?

24 A. Yes, sir.

25 Q. Doctor, isn't it true that both of these boys on

1 January the 17th were ordered out of the shelter --

2 THE COURT: What year, please?

3 MR. DAVIS: Of 1987.

4 Q. (By Mr. Davis) January 17th of 1987, some 16 days  
5 after they were brought into the shelter by the Tolars, they  
6 were ordered out of the shelter because the shelter personnel  
7 could not control them, I believe, and Donnie's records, the  
8 notation is that both of them were disrupting the shelter to  
9 the extent that the shelter personnel asked the Tolars to  
10 take them back into the home, didn't they?

11 A. I know that they went back to the Tolar home and --  
12 briefly for about two weeks, and I'm not finding the records  
13 that your referring to.

14 Q. Well, if you will, on Jim -- Jim Ed Tolar's records,  
15 page 2, date of release 1-17-87, "return to parents, so out  
16 of control that we could not continue to keep him." Do you  
17 see that notation, Dr. Connell?

18 A. My page 2 is foster care intake studies.

19 Q. This is the statistical sheet --

20 MR. DAVIS: Could I approach the witness?

21 THE COURT: You may.

22 Q. (By Mr. Davis) I'm not sure what number, but let me  
23 direct your attention, Doctor, to entitled "Statistical  
24 Sheet." Do you see down here date of release discharge  
25 information 1-17-87, "returned to parents. So out of control

1 that we could not continue to keep him." And discharged to  
2 parents, to the Tolars? You see that entry?

3 A. Yes, I do. I don't know whether I have that here in  
4 my records, so I may not have seen it before.

5 Q. Well, obviously these children did not mellow out  
6 and did not improve immediately after they came to that  
7 shelter from the Tolar home, did they?

8 A. The records that I have, and I can quote from them,  
9 indicate quite the opposite.

10 Q. Who provided those records to you?

11 A. Ms. Little.

12 Q. Do you have a -- this is again with Jim Ed Tolar --  
13 a discipline record for him that has at the top his name and  
14 his date of birth?

15 MS. LITTLE: Judge, before we go forward with  
16 that, can she answer the question that he just asked her?  
17 She's looking for her record that shows the opposite.

18 A. I found my record that shows the opposite, and I do  
19 not find the discipline record. My record that shows the  
20 opposite, if I can read to you, this is dated 1-20-87. This  
21 child and the brother were adopted three and one half years  
22 ago. This placement proved more than adoptive parents could  
23 adjust to with two of their own children. And I'm skipping  
24 down. Seems content and glad to be in this shelter. Oh,  
25 this is about Donnie. And during Donnie's stay at the

1 shelter he has gradually developed a better rapport, respect,  
2 and confidence and King's -- he is described by Mrs. King as  
3 becoming better at controlling his bad behaviors, he's  
4 courteous, often expresses his love and concern for the  
5 Kings. Mrs. King feels he is an easy to like child.

6 Q. Doctor, in talking about Donnie now, do you see --  
7 do you see a discipline record on Donnie Tolar?

8 A. No, I apparently don't have discipline records; or  
9 if I do, I cannot find them.

10 MR. DAVIS: If I could approach the witness,  
11 Your Honor.

12 THE COURT: You may.

13 Q. (By Mr. Davis) Doctor, let mow show you a record  
14 that apparently was not provided to you. This is -- this  
15 again refers to Donnie Tolar.

16 A. Okay.

17 Q. Donnie Tolar, date of birth 4-14-74. Discipline  
18 record, does it relate that physical punishment or  
19 restrictions described as below, removed radio from room,  
20 refused to turn it down -- refused to turn it down,  
21 restricted from playing pool, gets in arguments or fights  
22 every time he plays. Other methods of discipline, asked  
23 several times to keep it down, told if he can play without  
24 arguing or fighting, he can play, but always ends up arguing.

25 A. Uh-huh.



1 Q. Okay. That -- that page apparently was not provided  
2 to you?

3 A. Correct, it's not.

4 MS. LITTLE: For clarification, is that in the  
5 Donnie records?

6 THE WITNESS: Yes.

7 Q. (By Mr. Davis) Now, also do you have the discipline  
8 record for Jim Ed Tolar?

9 A. No, I don't.

10 MR. DAVIS: May I approach again, Your Honor.

11 THE COURT: You may.

12 Q. (By Mr. Davis) And this discipline record is  
13 dated -- dated 1-14-87. Does it state: Removed radio from  
14 room, spanked Jim with five licks with open hand for profane  
15 name calling, spitting, and kicking Mr. King who was his  
16 house parent?

17 A. Apparently, yes.

18 Q. The record indicates that he is physically violent  
19 toward the house parent who's trying to care for him,  
20 correct? By kicking him?

21 A. Right.

22 Q. Attempt to explain child's confusion, getting mad at  
23 house parents because of treatment from peers, and then on  
24 help needed from caseworker in dealing with child's behavior,  
25 states: Child becomes out of control at the least

1 provocation, remarks, or action of peers. Does that appear  
2 to be the entry there?

3 A. Of others.

4 Q. Of others. Okay.

5 A. Uh-huh.

6 Q. So those entries, plus the fact that both boys were  
7 removed back to the Tolar home, certainly are not consistent  
8 with a history of these two boys adjusting very quickly to  
9 their new surroundings at the Children's Shelter, do they?

10 A. I'm not sure about the dates because -- was that  
11 1-14-87?

12 Q. 1-14, with removal being 1-17.

13 A. Their removal from the Children's Shelter?

14 Q. Yes, back to the Tolar's home?

15 A. And yet on 1-20-87 -- let's see, it indicates that  
16 Donnie was placed there on 3-12-87, and that he is still at  
17 the shelter on 1-20-87, and the date of this entry that I  
18 read to you where he was adjusting well was, I believe, right  
19 around the same time. 1-20-87, that it says seems content  
20 and glad to be in shelter. So I guess I don't know what to  
21 make of these records.

22 Q. Do you have a statistical sheet on Donnie Tolar?

23 MR. DAVIS: If I could just approach.

24 THE COURT: Okay.

25 Q. (By Mr. Davis) It may be easier to do it this way.

1           Let me show you a page from Donnie's records,  
2   Doctor. This is dated 1-17 of '87, date of release, 1-17-87,  
3   circumstance: Removed because he was completely out of  
4   control. Discharged to parents, which, again, would indicate  
5   that he left that shelter on 1-17-87, correct?

6           A. Yes. Earlier it says: Parents brought children  
7   here stating they wanted to relinquish their parental rights,  
8   that the children did not want to live with them any longer.

9           Q. Right.

10          A. And then discharge to the parents.

11          Q. So the first comment would appear to be a comment  
12   made at the time that the Tolars brought the children on  
13   1-1-87.

14          A. The children were told that the parents would not  
15   take them back into their home.

16          Q. You're referring to a document dated 1-1-87,  
17   correct?

18          A. Right.

19          Q. So this would refer to the original placement by the  
20   Tolars?

21          A. At the shelter.

22          Q. Shelter, right.

23          A. The child's needs to be loved and encouraged that  
24   he's going through a very trying time.

25          Q. This, again, would be 1-1-87, right?

1 A. Right. Donnie was returned to his parents because  
2 of his inability to cope with his circumstances.

3 Q. Again, that would have been shared with the child  
4 on --

5 A. On 1-1-87. It's very difficult to follow the  
6 chronology. I don't have these records. Donnie was removed  
7 to a foster home.

8 Q. You're talking about 7-17-87 at this time. Well,  
9 I'm sorry, 3-12-87, he's now -- actually, the DHS now takes  
10 actual --

11 A. Conservatorship.

12 Q. -- conservatorship of him even though he may still  
13 be at the shelter, right?

14 A. Right. He remained there apparently until 7-17-87,  
15 by which time I think Jim had been at the Murphys for  
16 sometime and Donnie had tried to get himself placed there,  
17 too, unsuccessfully. This is the --

18 Q. This is the entry for 1-20-87.

19 A. So it looks like I had a partial set of these  
20 records, but in any case it doesn't seem to me like it's  
21 possible to derive from looking at these records exactly what  
22 the children's adjustment at the shelter was. There are  
23 entries that suggest it was good, and there are entries that  
24 suggest it was problematic. It's understood generally in  
25 child residential placement that there will be a honeymoon

1 period when the child behaves well and that there will be an  
2 acting out period after the honeymoon period of where the  
3 child kind of tests the limits to see what -- to test whether  
4 the people really like them and want them there and so  
5 forth. So without plotting all of this on a calendar, I have  
6 trouble of making sense out of exactly what was going on.

7 Grade reports may be more telling as sort of a  
8 consistent measure of the child's performance over time.

9 Q. Were you -- the records of Donnie Tolar, did they  
10 include an examination by Dr. Richard Ingram?

11 A. No. Oh, of Donnie? I'm sorry.

12 Q. Of Donnie, yes.

13 A. That's possible. I have an evaluation of him, and I  
14 don't recall who it was by.

15 Q. And I'm not talking -- I'm not talking about the  
16 psychological evaluations and testing, simply a physical  
17 examination by Dr. Richard Ingram. Do your records reflect  
18 that?

19 A. No, I don't think so.

20 Q. Let me ask you before I approach then, do the  
21 records that were given to you of Jim Ed Tolar, do they  
22 contain a record of a physical examination done by Dr.  
23 Richard Ingram on January 5th of 1987, shortly after the boys  
24 got to the shelter?

25 A. No, I see dental records from the next month, and

1 immunization records. Oh, yes, I see a visit to Dr. Ingram  
2 on 1-2-87 and on 6-16-87 for -- it doesn't say which child.

3 Q. I believe that would have been Donnie, but I'm not  
4 sure. I'm referring specifically to a record dated 1-5-87  
5 signed by Dr. Richard Ingram.

6 A. I have a physical exam and -- yes, that must be the  
7 document you're talking about. I can read the date, but I  
8 can't read the signature because of the nature -- the quality  
9 of the copy. It's about a four-page report; is that correct?

10 Q. Let me --

11 MR. DAVIS: If I may approach.

12 Q. (By Mr. Davis) Let me show you the document that  
13 I'm referring to and perhaps that can speed things up a  
14 little bit.

15 A. Okay.

16 Q. Looking -- well, let me show you.

17 A. In my stack it's towards the bottom of this group.

18 Q. Okay. I'm showing you a page. It's a one-page  
19 document. Actually it refers to -- it's page 4?

20 A. Right.

21 Q. Okay. And your records do include that, do they  
22 not?

23 A. Yes, they do.

24 Q. And page 4, actually there was several specific  
25 questions that were answered by Dr. Ingram, right?

1 A. Right.

2 Q. Does this patient show evidence of child abuse,  
3 physical, sexual, psychological? If yes, specify. What was  
4 Dr. Ingram's response, Dr. Connell?

5 A. No.

6 Q. Are there any apparent problems in the area of  
7 developmental level, speech behavior, or emotional  
8 difficulties? If yes, specify. What is Dr. Ingram's  
9 response on January 5th of '87.

10 A. No, that Donnie has no behavior problems or  
11 emotional difficulties.

12 Q. Is there anything of medical significance for this  
13 patient not included in this form, and his answer again is  
14 no, correct?

15 A. Correct.

16 Q. And the same document -- same type of document was  
17 generated with regards to this defendant, Jedidiah Isaac  
18 Murphy, was it not?

19 A. If it was, I don't know that. I don't have it.

20 Q. Okay. So for some reason you were provided with  
21 that form for Donnie Tolar, but as I understand it, you  
22 weren't provided with that similar form for this defendant  
23 who you're testifying for?

24 A. Correct.

25 Q. Let me show you, Doctor --

1 A. Oh, wait a minute. I find one page, Jim Murphy,  
2 physical exam, dated 11-3-88. That looks like one of the  
3 pages of Donnie's, but it only refers to his -- his need for  
4 his vision exam.

5 Q. Actually if we look at the documents here, actually  
6 there was a similar four-page report generated by Dr. Ingram,  
7 medical history and physical examination.

8 A. Okay. I don't --

9 Q. Do you have that?

10 A. No, sir, I don't.

11 Q. And again, looking at the fourth page with regards  
12 to this defendant --

13 A. Okay.

14 Q. Okay.

15 A. Is this it?

16 Q. No, ma'am. That's -- this again, is 1-5-87.

17 A. Yep. And this was in my school records so that  
18 makes me wonder. Nope, I'm sorry, I don't have that. Okay.

19 Q. Does the patient show evidence of child abuse,  
20 physical, sexual, psychological? And Dr. Ingram's response  
21 on January the 5th was no, correct?

22 A. Correct.

23 Q. Have you seen the medical records from Dr. Ingram's  
24 office?

25 A. No, I haven't. And by the same token in the



1 interest of completeness it said there that Jim had no  
2 behavioral or emotional problems.

3 Q. Right.

4 You were not provided with the office records from  
5 Dr. Ingram?

6 A. No, sir, not other than those of Donnie that I just  
7 read to you -- went over with you.

8 Q. So you wouldn't be aware that he saw Dr. Ingram at  
9 least twice before he entered the shelter?

10 A. No.

11 Q. You don't know that?

12 A. No, I don't know that.

13 Q. All right. You don't know that the office entry  
14 says again there was no evidence of any psychological or  
15 physical abuse. You don't know that because you haven't seen  
16 the records, weren't provided to you; is that correct?

17 A. That's correct, uh-huh.

18 Q. And these two children who were leaving a very  
19 abusive environment, isn't it true that their reaction to  
20 leaving that home and to entering the shelter which  
21 supposedly would be a very much safer environment, Jim's  
22 reaction was that he was confused, refused to listen to our  
23 explanation of the shelter, screaming, kicking, and out of  
24 control, right?

25 A. Apparently.

1 Q. Do you have the child care record intake -- child  
2 card record intake dated 1-1-87?

3 A. I have not read those words that you just -- that  
4 you just read, I don't believe.

5 MR. DAVIS: May I approach, Your Honor.

6 THE COURT: You may.

7 A. I have Donnie, but not on Jim. Okay. So let me  
8 just read it.

9 Q. (By Mr. Davis) Okay. So as I understand, the  
10 record I'm showing you with regard to Jim, you were given  
11 that record for Donnie but not for the defendant?

12 A. Right. I read the words that you just read, yes.

13 Q. And Donnie's reaction was very similar, wasn't it?  
14 He was very upset with being placed at that shelter?

15 A. The records I have, as I said, indicate that he was  
16 happy to be there.

17 Q. When he was first -- first placed there in the  
18 shelter, again the child card record intake for 1-1-87, the  
19 day that he and his brother got there to the shelter from  
20 this supposedly abusive home, his reaction, wasn't it crying,  
21 hiding behind curtains, and very upset?

22 A. Was that dated 1-12, did you say?

23 Q. 1-1-87, the day that he arrived at the shelter?

24 A. And again, I did not have that. So if you say  
25 that's what it says, then I assume that's what it says.

1 THE COURT: Mr. Davis, would this be an  
2 appropriate place to --

3 MR. DAVIS: It would, Your Honor.

4 THE COURT: The bailiff has indicated that  
5 jurors' lunch is here. We will stand in recess.

6 THE BAILIFF: All rise.

7 MR. BYCK: How long?

8 THE COURT: 1:10.

9 (Recess taken.)

10 THE BAILIFF: All rise.

11 (Jury returned to courtroom.)

12 THE COURT: Jurors may be seated. Mr. Murphy,  
13 counsel, visitors in the gallery, you may be seated.

14 Mr. Davis, would you like the last question read  
15 back to you?

16 MR. DAVIS: I don't think I need that, Judge.  
17 Thank you, though.

18 Q. (By Mr. Davis) Dr. Connell, I noticed that over the  
19 break that you were on the witness stand and Ms. Little was  
20 up there talking with you. Were y'all discussing your  
21 testimony?

22 A. Yes, we were looking through my records and trying  
23 to coordinate them with hers.

24 Q. When you talked with the defendant in this case, was  
25 it your belief that he was very forthcoming with you and

1 being truthful with you?

2 A. Yes, I thought he was truthful and forthcoming  
3 inasmuch as I allowed him time to be, yes.

4 Q. Now, when you came up there to see him, he knew who  
5 you were, correct?

6 A. Yes.

7 Q. He knew that you had been sent up there by his  
8 attorneys?

9 A. Yes.

10 Q. He knew that you would be acting as an expert  
11 witness on his behalf?

12 A. Yes.

13 Q. He was charged with capital murder?

14 A. Yes.

15 Q. Facing the possible death penalty?

16 A. Yes.

17 Q. This man down here had every incentive in the world  
18 to lie to you, didn't he?

19 A. Yes.

20 Q. And when he gave you a medical history, he told you  
21 that he had been treated for ADHD, correct?

22 A. Yes. I think he told me he had been diagnosed  
23 ADHD. He was not medicated.

24 Q. In all of the records that you've seen, there is not  
25 one mention of a diagnosis of ADHD, is there?

1 A. I didn't find one.

2 Q. When he told you about the injury to his thumb,  
3 matter of fact, his description to you was that his thumb was  
4 ripped off or nearly ripped off, wasn't it?

5 A. That may be. I heard variously shot off, shot off  
6 with a staple gun.

7 Q. Of course, you didn't have the benefit of any of his  
8 medical records from Dr. Vandiver, did you?

9 A. I think I had a record that -- a medical record that  
10 mentioned his thumb injury, but it may have been on the basis  
11 of his report at the facility. I don't think I had the  
12 record where he was actually treated for his thumb injury.

13 Q. When you talked with him about his account of the  
14 crime, do you think he was being forthcoming with you at that  
15 time?

16 A. Yes, again, inasmuch as I allowed him time. I  
17 understand that I didn't hear everything that he has also  
18 told other people. Everything I did hear seemed consistent  
19 with other reports that he had given, but I'm not sure I gave  
20 him enough time to tell me everything that he had told other  
21 people.

22 Q. Okay. Well, he certainly had enough time to tell  
23 you that after he left Bleachers bar, that his next  
24 recollection was waking up in the car driving with Ms.  
25 Cunningham sitting beside him. Do you remember him saying

1 that to you?

2 A. Yes, I do.

3 Q. And he had enough time to tell you that he found the  
4 gun in the console of the car and that that scared him?

5 A. Yes.

6 Q. In fact, he had enough time to tell you he claimed  
7 that Ms. Cunningham, the victim, the deceased in this case,  
8 is actually the one that told him where the gun was?

9 A. Yes.

10 Q. That's what he claimed to you, didn't he?

11 A. Yes, he did.

12 Q. And when he talked about this being an accident and  
13 the injury to his left hand, as a matter of fact, he said to  
14 you that it was a through and through gunshot in his left  
15 hand. That's the account he gave to you?

16 A. That's right.

17 Q. And I guess you assumed that was correct, too?

18 A. That's right, at the time I did.

19 Q. Have you changed your opinion now?

20 A. Yes. As I said, I read in one of the medical  
21 reports that it was described as a shot, the result of a  
22 staple gun. And I think that was a report that he gave about  
23 it. I don't have a way of knowing which of those two reports  
24 was correct.

25 Q. Well, as a matter of fact, the medical records from

1 Dr. Vandiver that are on file here show that he -- I'm sorry,  
2 from Dr. DeHaan and from the hospitals in Texarkana show that  
3 that was actually a pellet that lodged in his hand. There  
4 was no through and through injury. Did you know that?

5 A. No, I didn't.

6 Q. Do you know how many different accounts he's given  
7 to different people about that shooting back in 1996?

8 A. No, sir, I don't.

9 Q. You don't know that he's told some physicians that  
10 he was a robbery victim, he got shot in the lung and the hand  
11 during a robbery attempt?

12 A. I didn't know that.

13 Q. You don't know that he told some people it was a .22  
14 caliber pistol?

15 A. No, I didn't know that.

16 Q. You didn't know that he's told some people that the  
17 bullet shattered in his hand?

18 A. No.

19 Q. That the median nerve was shattered?

20 A. I didn't know that.

21 Q. During the discussion that you had with him about  
22 this incident here, why did he go to the ATM machine at  
23 Washington Mutual in Richardson, Texas, immediately following  
24 the death of Bertie Cunningham?

25 A. I don't think he mentioned that to me. I'll go to

1 my notes and see. I know that he did tell me that he bought  
2 some beer. I don't know whether he went there to get money  
3 for that or for another reason. Talked about using her  
4 credit cards, but I don't -- I don't see a mention of the ATM  
5 machine in my notes from my interviews with him.

6 Q. You had the police records in your possession,  
7 didn't you?

8 A. Yes, I did.

9 Q. You knew that he had used that credit card up there  
10 at approximately 4:00 p.m. shortly after the death of Bertie  
11 Cunningham, right?

12 A. I ultimately knew that. I eventually knew it. I'm  
13 not sure I knew it the day I was walking to him the first  
14 time.

15 Q. Well, you've talked to him how many times?

16 A. I've talked to him three times. As I said, the  
17 third time was almost exclusively doing some testing and  
18 talking about his medication issues.

19 Q. You've never asked this man why he took that credit  
20 card immediately following the death of Ms. Cunningham and  
21 tried to obtain money out of her bank account?

22 A. No, I haven't asked him that specifically. As I  
23 said, he told me about using her credit card to buy the kids  
24 a Go-Peds or something. So I think I may have sort of run  
25 those together in my mind, but I didn't break that out.



1 Q. Did you ever ask him why he tried to use the ATM  
2 down on Harry lines later that night?

3 A. No.

4 Q. This man when you interviewed him told you that he  
5 never hurt anyone in his life, didn't he?

6 A. He said that at one time. He also told of times  
7 that he had hurt people, so --

8 Q. Well, that statement when he told you he'd never  
9 hurt anyone in his life, that certainly was a lie, wasn't it?

10 A. Yes, you could describe it as a lie, as a  
11 misstatement. As I say, he told me otherwise at other times  
12 so I don't think he was actually trying to sell me that. I  
13 think he was -- he was reflecting how he felt about himself,  
14 that he didn't feel that he was a violent person. But as I  
15 said, he did tell me of violent acts that he had committed.

16 Q. When did he mention Mandy Kirl to you, about putting  
17 a gun up to her head?

18 A. I don't think he did tell me about that.

19 Q. When did he mention the kidnapping of Sherryl  
20 Wilhelm over in Arlington?

21 A. He did not.

22 Q. Did he ever mention the robbery of Margie Ellis up  
23 in Wichita Falls?

24 A. No, he did not. He told me he was arrested once  
25 before, and I didn't ask him the details about the previous

1 arrest.

2 Q. Doctor, I want to talk just a minute about the test  
3 that you administered to him, first of all, the Shipley  
4 test. His score was 105, wasn't it?

5 A. That's correct.

6 Q. 100 would be the average score?

7 A. That's right.

8 Q. So he actually was a little bit above average on  
9 intelligence, correct?

10 A. Correct. Still within the range of average, but  
11 yes.

12 Q. I think that you and your report or in your previous  
13 testimony to me, you said he was average to high average on  
14 that test, correct?

15 A. Right. He tested out average. I think I may have  
16 been referring to -- there are two portions of the test, one  
17 is straight vocabulary, the other is verbal reasoning ability  
18 and -- let's see, his verbal reasoning ability was within the  
19 high average range. His verbal ability was average, and the  
20 overall intellectual estimate was average. But the raw  
21 intelligence as reflected on verbal reasoning ability was  
22 better than actual vocabulary, suggesting more intelligent  
23 than his education would allow.

24 Q. That reasoning ability, would that also include  
25 problem solving?

1 A. Yes, sir.

2 Q. So he is -- appeared to be high average when it  
3 comes to solving problems?

4 A. Yes, I think that's correct.

5 Q. There was absolutely no evidence on that test of any  
6 mental retardation, was there?

7 A. No, there wasn't.

8 Q. On the MMPI 2, I believe your testimony originally  
9 was that you didn't think the defendant exaggerated on that  
10 test; is that right? Do you recall saying that?

11 A. I recall saying that I didn't think he -- well, I'm  
12 not sure exactly what I -- what I said or how I characterized  
13 it. I do think that he was extremely forthcoming in  
14 describing his symptoms. I felt like he was consistent in  
15 describing his symptoms, consistent with the record that I  
16 was able to uncover or read about him and with everything he  
17 told me on interview. So I didn't think he was purposely  
18 exaggerating on any of the items in order to -- to make  
19 himself look bad. He does see himself as extremely  
20 symptomatic in a way that may be exaggerated beyond how he  
21 actually is, if that all makes sense.

22 Q. It does.

23 A. Okay.

24 Q. I mean, it's not unusual for individuals in a county  
25 jail setting to be depressed, is it?

1 A. No.

2 Q. It's not unusual for them to be feeling anxiety, is  
3 it?

4 A. No.

5 Q. Not unusual for them to have certain physical  
6 symptoms, such as an upset stomach or headaches, correct?

7 A. Correct.

8 Q. It certainly wouldn't be unusual for a person facing  
9 a death penalty trial to have those symptoms either, would  
10 it?

11 A. That's correct.

12 Q. Now, the MMPI-2 is administered -- he actually goes  
13 true and false on a lot of different questions, doesn't he?

14 A. Yes.

15 Q. Have you reviewed the answers that he gave to you on  
16 that MMPI-2?

17 A. Not on all 567 items, but on a number of -- what are  
18 called critical items that my computer interpretative program  
19 spits out to do some follow-up inquiry if you don't know what  
20 the person was referring to.

21 Q. Okay. I'm looking at Question 37 on the test, and  
22 this is reported as the question being: At times I feel like  
23 smashing things. And the defendant's response to that was  
24 true.

25 A. Right.

1 Q. Question 389: I am often said to be a hot head.  
2 And again, he's answered true to that, too; is that correct?

3 A. That's correct.

4 Q. Question 227. Question was: I don't blame people  
5 for trying to grab everything they can in this world. And  
6 his response was what?

7 A. True.

8 Q. Doctor, who is James N. Butcher?

9 A. Butcher is probably the leading expert in the  
10 country on the interpretation of the MMPI.

11 Q. In fact, Dr. Butcher, interpreted the MMPI-2 that  
12 was administered to Jedidiah Murphy, didn't he?

13 A. Yes.

14 Q. As a matter of fact, you provided me with a copy of  
15 his report sometime ago?

16 A. Yes, I did.

17 Q. Do you have a copy of that report there with you?

18 A. Yes, I do.

19 Q. Okay. You see there on "Profile Validity" that Dr.  
20 Butcher says, "This client's responses to the items that  
21 appear near the end of the MMPI-2 were exaggerated in  
22 comparison to his responses to items that appear in the  
23 beginning of the test."

24 Do you see that?

25 A. Yes.

1 Q. "There is a" -- "there is a possibility that he  
2 responded to the last section of items either carelessly,  
3 randomly, or deceitfully, thereby invalidating that portion  
4 of the test."

5 A. That's right, I mentioned --

6 Q. That was his -- that was his conclusion, wasn't it?

7 A. Exactly, yes. Well, it wasn't a conclusion. It was  
8 his hypothesis.

9 Q. Well, that's his statement in this report?

10 A. But if you notice on the beginning of the report, it  
11 says that the interpretation that is offered is not meant to  
12 be a final interpretation, that, interview, observation, and  
13 history should be taken into account and so forth. So he  
14 offers these as hypotheses. He gives those as some possible  
15 reasons why F back as elevated. And as I told you earlier, I  
16 read through the items to try to understand which of those it  
17 might be.

18 Q. Under "Symptomatic Patterns" did Dr. Butcher state  
19 that "he," the defendant, "appears to be immature,  
20 aggressive, moody, and rebellious, and he has serious  
21 problems controlling his impulses and temper. He may be  
22 assaultive, and his acting-out behavior has probably caused  
23 him serious interpersonal problems. He may attempt to deny  
24 problems and blame others. He has a low tolerance for  
25 frustration, and he loses control easily."

1           Those were the statements of Dr. Butcher, weren't  
2 they?

3           A.    They were, yes.

4           Q.    Under "Interpersonal Relations," this is on page 4,  
5 isn't it true that Dr. Butcher states, "Although his  
6 relationships tend to be quite superficial, he appears to  
7 make acquaintances easily. He lacks genuine interpersonal  
8 warmth and manipulates people for his own gains, possibly  
9 through intimidation."

10           Isn't what that Dr. Butcher said?

11           A.    Yes, that based upon his answers and his description  
12 of himself, that would be a hypothesis about his personality.

13           Q.    Under "Diagnostic Considerations," did Dr. Butcher  
14 make the statement in second paragraph, He appears to have a  
15 number of personality characteristics that have been  
16 associated with substance abuse or substance abuse --  
17 substance use problems?

18           A.    Yes.

19           Q.    In the fourth paragraph did Dr. Butcher state This  
20 client's profile matches that of the -- you'll have to help  
21 me with the pronunciation of that next word if you don't  
22 mind.

23           A.    The Megargee Type H offender.

24           Q.    One of the most seriously disturbed inmate types,  
25 correct?

1 A. Yes.

2 Q. Did he go on?

3 A. Excuse me, and that I need to mention to you that  
4 seeing that language in here reminds me I did not score this  
5 on straight clinical. I scored it on the norms for inmate  
6 populations. That's why that wording would even be  
7 included. You also left out, when you were reading in  
8 paragraph 2, number of personality characteristics associated  
9 with substance abuse or substance use problems, that the next  
10 sentence says, His scores on the addiction proneness  
11 indicators suggest that there is a possibility of his  
12 developing an addictive disorder. Further evaluation for the  
13 likelihood of a substance use or abuse disorder is  
14 indicated. In his responses to the MMPI-2, he has  
15 acknowledged some problems with excessive use or abuse of  
16 addictive substances.

17 That's where that language comes from, his own  
18 description of his drinking history and drug abuse history.

19 MR. DAVIS: May I approach, Your Honor.

20 THE COURT: You may.

21 Q. (By Mr. Davis) Just so we have the complete file  
22 with all of Dr. Butcher's comments, State's Exhibit Number  
23 150, do you recognize that as the report of Dr. James Butcher  
24 that you provided to me?

25 A. Yes.



1 Q. Okay.

2 MR. DAVIS: Your Honor, at this time we'll  
3 offer State's Exhibit 150 with the understanding that a clean  
4 copy will be provided to the jury.

5 (State's Exhibit No. 150 offered)

6 MS. LITTLE: No objection.

7 THE COURT: Admitted.

8 (State's Exhibit No. 150 admitted)

9 Q. (By Mr. Davis) Doctor, in the fourth paragraph,  
10 again, continuing, did Dr. Butcher make this statement:  
11 "Adjustment to prison appears to be difficult for them,"  
12 people with the Type H offender profile?

13 A. Yes.

14 Q. These individuals tend to have more disturbed  
15 interpersonal relationships than other inmates. They tend to  
16 be quite aggressive and may be viewed by other inmates as  
17 crazy. Now, those are statements made by Dr. Butcher, aren't  
18 they?

19 A. Yes.

20 Q. And under "Treatment "Considerations" on page 5 --

21 A. But it goes on to say, "They show more anxiety,  
22 unusual thinking, and irritability than other inmates. Many  
23 of these individuals were hard drug users prior to  
24 incarceration."

25 Q. And there's no doubt this defendant was a hard drug

1 user before his incarceration, wasn't he?

2 A. When they say hard drug users, they're referring  
3 generally there to heroin, at least to cocaine. I don't know  
4 that about him. I know that he was an alcohol abuser.

5 Q. Have you reviewed the records of Glen Oaks Hospital  
6 and Timberlawn?

7 A. Yes, I have.

8 Q. And in those documents, isn't it true that this man  
9 admits to the use of heroin and cocaine in his past, doesn't  
10 he?

11 A. Yes, he did admit to using, but I don't know that  
12 that would characterize him as a hard drug user in the way  
13 that it's intended here. In other words, I'm not sure he was  
14 strung out on those drugs over a period of time.

15 Q. Under "Treatment Considerations," the first sentence  
16 that Dr. Butcher has in State's Exhibit 150: "Although  
17 psychological problems are evident, inmates with this MMPI-2  
18 clinical profile are poor candidates for psychotherapy"?

19 A. Yes, it does.

20 Q. "They are not very introspective and do not seek  
21 psychological treatment on their own. When they are forced  
22 into treatment, they may be marginally cooperative but their  
23 problems are ingrained and persistent. They tend to use  
24 denial a great deal and have little psychological insight.  
25 They are quite self-serving, selfish, and immature; they

1 usually do not see a need for psychological therapy.  
2 Individuals with this profile pattern are not very amenable  
3 to changing their behavior. They have anger-control problems  
4 that are likely to interfere with treatment. Early  
5 termination of therapy is likely, possibly in anger. The  
6 manipulative behavior that patients with this profile exhibit  
7 is likely to interfere with the development of trust in  
8 relationships, making the treatment relationship stormy.  
9 Individuals with this profile may develop substance-abuse  
10 problems if treated with medication."

11 Those are the comments that Dr. Butcher made under  
12 "Treatment Considerations," right?

13 A. Yes. And of course, we know that one is wrong, that  
14 is, that Mr. Murphy did in fact present himself for treatment  
15 on his own on at least one occasion. And then the very next  
16 line where you left off is: "This MMPI-2 interpretation can  
17 serve as a useful source of hypotheses about clients." The  
18 hypotheses that are generated here are generated on the basis  
19 of Mr. Murphy's own admission of the problems and  
20 characteristics that you just summarized.

21 Q. Well, I mean, Dr. Butcher is looking at the MMPI  
22 that was produced by you, correct?

23 A. No, it was produced by Mr. Murphy.

24 Q. Okay. Yeah, right. And you told us just a minute  
25 ago that you thought Mr. Murphy was very forthcoming and his

1 answers were truthful on the MMPI, didn't you?

2 A. Yes, in general, I think he was describing himself  
3 very accurately. He was being an honest informant about his  
4 own worst characteristics.

5 Q. Who is Dr. Theodore Millon?

6 A. Millon. He's the author or the developer of the  
7 Millon Clinical Multiaxial Inventory, the MCMI-III.

8 Q. I mean, he's actually the man that actually created  
9 the MCMI-III, right?

10 A. That's right.

11 Q. You consider him to be authoritative?

12 A. Yes, I do.

13 MR. DAVIS: May I approach, Your Honor.

14 THE COURT: You may.

15 Q. (By Mr. Davis) Doctor, let me hand you State's  
16 Exhibit Number 151, ask you whether or not that is the report  
17 produced by Dr. Millon in this case?

18 A. Yes, it is.

19 MR. DAVIS: At this time we'll offer State's  
20 Exhibit 151, again with the understanding that a clean copy  
21 will be provided to the jury.

22 (State's Exhibit No. 151 offered)

23 MS. LITTLE: No objection.

24 THE COURT: Admitted.

25 (State's Exhibit No. 151 admitted)

1 Q. (By Mr. Davis) Again, my understanding was that you  
2 thought the defendant was being truthful during the MCMI-III,  
3 also, correct?

4 A. Forthcoming I think is the term I used. I -- I did  
5 indicate that I felt that he had described himself in a  
6 harshly -- harshly negative way.

7 Q. And I believe your overall impression was that he  
8 was acutely deeply depressed?

9 A. Yes, that was certainly the reflection of his  
10 responses on the MCMI-III. In the interest of completeness,  
11 the first paragraph of the capsuled summary is a very  
12 important paragraph.

13 Q. In that first -- when we talk about the "Capsule  
14 Summary" in Dr. Millon's report, doesn't it state: MCMI-III  
15 reports are normal -- are normed on patients who were in the  
16 early phases of assessment for psychotherapy for emotional  
17 discomfort or social difficulties?

18 A. That's correct. Somebody who comes to a therapist  
19 on his own because he's hurting and describes himself  
20 sometime in an exaggerated way, sometimes in an honest way in  
21 an effort to communicate to the therapist what all is wrong  
22 so as to get some help or some attention or some sympathy.

23 Q. I mean, they're under a clinical setting. They're  
24 not charged with capital murder, for instance, generally, are  
25 they?

1 A. That's correct.

2 Q. They don't have an incentive to come into a  
3 therapist or a counselor or psychologist and lie to them, do  
4 they?

5 A. Generally not. I mean, it's also administered in  
6 situations where that is the case, but, yes, that's right.

7 Q. And so the next sentence in this report says:  
8 "Respondents who do not fit this normative population or who  
9 have inappropriately taken the MCMI-III for nonclinical  
10 clinical purpose may have distorted reports"?

11 A. Correct.

12 Q. And certainly this defendant would fit within that  
13 category, wouldn't he?

14 A. It's conceivable. I don't know that these results  
15 should be considered definitive for diagnosis, for example.  
16 I find them useful in elucidating or illuminating some of his  
17 personality characteristics as he perceives them essentially.

18 Q. As a matter of fact, under "Interpretative  
19 Considerations," Dr. Millon said, "The clinician should be  
20 aware that the inmate" -- in other words, the defendant --  
21 "may have reported more psychological symptoms than  
22 objectively exist. Adjustments correcting for this tendency  
23 were probably successful in retaining the instrument's  
24 validity."

25 But there is always the possibility in this kind of

1 situation that an inmate, such as the defendant, may over  
2 report his problems to you, isn't there?

3 A. Certainly.

4 Q. And with regards to the "Response Tendencies" of the  
5 defendant on page 4, isn't it true that Dr. Millon says:  
6 "This inmate's response style suggests a moderate tendency  
7 toward self-deprecation and a consequent exaggeration of  
8 current emotional problems."

9 Is that what it says?

10 A. That's what it says, yes.

11 Q. And when he talks about the Axis II Personality  
12 Patterns on page 5, his first statement there, isn't it true,  
13 is: "This man appears to see himself as having had few of  
14 the opportunities that he perceives that others have had.  
15 This awareness may intrude on his thoughts and interfere with  
16 his behavior, creating anger and resentment and ultimately  
17 upsetting his capacity to cope in a satisfactory way with  
18 many of his life tasks."

19 A. You're skipping the first four paragraphs and going  
20 to the last paragraph.

21 Q. Yes, I'm asking you about the first paragraph on  
22 page 5.

23 A. Right. That is what it says, yes.

24 Q. And in fact, I mean you're aware that this person,  
25 while he was in the Tolar home and in the Murphy home, had

1 many, many opportunities, didn't he?

2 A. Yes, he did.

3 Q. In fact, he had many opportunities that most of us  
4 don't ever have in our lifetime?

5 A. He had many opportunities that many people don't  
6 have in their lifetime.

7 Q. Country club privileges and membership being one of  
8 them?

9 A. Yes, sir.

10 Q. Having fathers that will coach them in baseball, for  
11 instance?

12 A. Yes.

13 Q. Scout camps provided by parents?

14 A. Yes.

15 Q. Looking on page 6, this would be under the category  
16 of "Axis I: Clinical Syndromes," the second paragraph, does  
17 that paragraph state: "For some time, this man has probably  
18 been engaged in abusing drugs, legal or street substances, or  
19 both. Irritable, negative, and hostile, he may employ drugs  
20 not only to help him unwind his tensions and undo his  
21 conflicts but also to serve as a statement of resentful  
22 independence from the constraints of social convention and  
23 expectation. In addition to freeing him from feelings of  
24 ambivalence toward himself and others, drugs liberate him  
25 from whatever remnants of guilt he may experience over



1 discharging his less charitable impulses and fantasies. Such  
2 defiant and hostile are undergirded in part by  
3 self-destructive elements. For example, these are evident in  
4 the careless disregard he may express about the consequences  
5 that drugs can create."

6 That's the entirety of that paragraph, isn't it?

7 A. Yes, it is.

8 Q. And again, have you had an opportunity to look at  
9 the individual responses that the defendant gave on the  
10 MCMI-III?

11 A. Again, not all 175 of them, but instead the critical  
12 items that emerge as it's computer scored.

13 Q. For instance, Question 51 to begin with, that  
14 question asks: When things get boring, I like to stir up  
15 some excitement. His response was true to that, wasn't it?

16 A. Right.

17 Q. You see Question 53?

18 A. Yes.

19 Q. Punishment never stopped me from doing what I  
20 wanted?

21 A. He answered true.

22 Q. True to the statement "punishment never stopped me  
23 from doing what I wanted."

24 Now, when he took this test on Question 76, he was  
25 asked: I keep having strange thoughts that I wish I could

1 get rid of. And his response was false, wasn't it?

2 A. Yes, it was.

3 Q. When did you -- when was this test administered?

4 A. On March the 1st, 2001.

5 Q. Now, with regard to drug use, he was asked: There  
6 have been times when I couldn't get through the day without  
7 some street drugs. And his response was false to that,  
8 wasn't it?

9 A. What number is it?

10 Q. That's number 118.

11 A. Yes.

12 Q. Which would indicate that he doesn't have a  
13 compelling need for drugs. That's more of a conscious kind  
14 of recreational use of drugs?

15 A. It would indicate that if that was true, yes.

16 Q. Now, you -- you mentioned briefly that -- isn't it  
17 true that the MCMI-III also indicated he had certain  
18 antisocial characteristics?

19 A. Yes, along with symptoms of PTSD, posttraumatic  
20 stress disorder, and symptoms of alcohol dependence.

21 Q. So --

22 A. Yes.

23 Q. If I may then, the answer is yes to the question,  
24 did he have certain antisocial characteristics. Was your  
25 answer yes?

1 A. Yes.

2 Q. What is antisocial personality disorder, Doctor?

3 A. It refers to a compilation of symptoms that include  
4 being exploitive of others, having superficial and shallow  
5 attachments to others, being manipulative, being insensitive  
6 to the needs of others, or not caring about the consequences  
7 of one's behavior, being impulsive, being immature, acting  
8 out against societal norms, acting in violation of the rules  
9 or the law. I think that's the essence of it.

10 Q. Individuals with that kind of personality disorder  
11 are sometimes called either sociopaths or psychopaths, aren't  
12 they?

13 A. Actually the terminology that has advanced in the  
14 past 5 to 10 years has differentiated psychopaths from  
15 antisocial personality. All psychopaths are antisocial  
16 personalities, but by no means are all antisocial  
17 personalities considered psychopaths. Psychopath is the  
18 extreme form of antisocial personality and represents -- I  
19 think generally it's thought that something like 5 to 10  
20 percent of antisocial personalities.

21 Q. Is there a checklist for possible psychopathy?

22 A. There is.

23 Q. What's it called?

24 A. The Psychopathy Checklist Revised.

25 Q. Do you know how many elements are on that checklist?

1 A. Yes, sir.

2 Q. How many?

3 A. 20.

4 Q. Would criminal versatility be one of them?

5 A. Yes.

6 Q. Criminal versatility would mean what to you?

7 A. I don't have the manual in front of me. I -- Hare's  
8 very specific about the definitions of each of these terms  
9 and I'm not -- I'm not sure exactly how it's defined. I  
10 think either three or five different kinds of criminal acts  
11 in adulthood and there has to actually I think -- I don't  
12 recall whether there has to actually be a record of them or  
13 whether the person's admission of them is sufficient. Hare  
14 varies on some of the items in that sense, so I really can't  
15 tell you the exact definition of versatility.

16 Q. Well, let's see, the defendant has been convicted of  
17 burglary of a motor vehicle.

18 A. Yes, sir.

19 Q. Convicted of burglary of a habitation, correct?

20 A. Yes.

21 Q. Convicted of theft?

22 MS. LITTLE: Judge, I'm going to object to him  
23 asking her what the psychopathy checklist things can be,  
24 unless he qualifies her to administer it or evaluate.

25 THE COURT: Objection is overruled.

1 Q. (By Mr. Davis) Certainly capital murder, another  
2 type of offense?

3 A. Yes.

4 Q. Would you consider kidnapping to be a different kind  
5 of offense, too?

6 A. Yes.

7 Q. Would you consider robbery to be a different type of  
8 offense?

9 A. Than burglary?

10 Q. Than burglary, yes, ma'am.

11 A. Well, yes, but I'm not sure Hare does. I don't  
12 know.

13 Q. How about aggravated assault?

14 A. Yes.

15 Q. Certainly another one on the checklist would be  
16 impulsivity, wouldn't it?

17 A. Yes.

18 Q. Certainly this defendant exhibits signs of  
19 impulsivity, doesn't he?

20 A. Yes.

21 Q. Early behavior problems, would that also be on the  
22 checklist?

23 A. It is on the -- on the checklist.

24 Q. Certainly this defendant would exhibit signs for  
25 that, too, wouldn't he?

1       A.    Not according to the records, and I think that's  
2   what Hare relies on there.  As you read, the Doctor indicated  
3   there were no behavioral problems, Dr. Ingram.  The school  
4   records do not list behavior problems.  They list attention  
5   problems, difficulty concentrating, difficulty getting his  
6   work done, but I saw no reflection in his school records of  
7   behavior problems.  And I don't think he was handled by  
8   juvenile authorities up until adolescence, and I don't --  
9   have not seen records to suggest that he was handled with any  
10  degree of frequency during adolescence, although he himself  
11  admitted to me that he had a couple of run-ins with the law.

12           Again, I would have to look.  Hare is very specific,  
13  and you really cannot just eyeball these questions and give  
14  answers and come up with any kind of reliable score, because  
15  the scoring is so important.  It's extremely important to  
16  apply the definitions correctly that it gives in the manual.

17       Q.   Well, one of the -- one of the matters on the  
18  checklist would be a need for stimulation, proneness to  
19  boredom, wouldn't it?

20       A.   Yes.

21       Q.   Conning and manipulative would also be one of the  
22  checklist items, wouldn't it?

23       A.   Yes.

24       Q.   Lack of remorse or guilt, would that be on the  
25  checklist?

1 A. Yes.

2 Q. Shallow effect?

3 A. Shallow affect. These five or six that you're  
4 naming, I don't recall whether all of these are subsumed  
5 under one item or whether you're -- whether you're listing  
6 separate items. If you have a copy of the checklist, I would  
7 be glad to --

8 Q. Well, yes, ma'am, I do. I have a -- I have a copy  
9 that has 20 items on it.

10 A. Okay.

11 Q. Lack of realistic long-term plans?

12 A. Yes.

13 Q. Irresponsibility?

14 A. Yes. And that's defined generally by way of whether  
15 the person has been independently employed, gainfully, with  
16 any degree of regularity or instead has exploited the good  
17 will of others to get by.

18 Q. Failure to accept responsibility for your own  
19 actions?

20 A. Right. That is one.

21 Q. Grandiose sense of self worth?

22 A. Yes.

23 Q. Superficial charm?

24 A. Yes.

25 Q. Pathological lying?

1 A. Yes.

2 Q. When you talked about him giving you a history of  
3 being denied medications up in the jail, do you recall  
4 testifying to that?

5 A. I think what he indicated to me was that he was  
6 getting it at different times or irregularly. His mother is  
7 who told me that he had been -- actually not gotten his  
8 medication for two or three days.

9 Q. And you made mention of an incident that occurred up  
10 in the jail?

11 A. Yes. I was made aware of one.

12 Q. And an incident involving a Sheriff's deputy or  
13 jailors, correct?

14 A. Yes, as I understood it.

15 Q. Where they had to use physical force to restrain  
16 him?

17 A. Yes.

18 Q. And that occurred on the 7th floor of the George  
19 Allen Building, an area of the jail up there, didn't it?

20 A. I can't tell you that. I don't know.

21 Q. Were you not given any records from the jail  
22 concerning that incident?

23 A. Yes, I was given records from the jail, and I  
24 haven't reviewed them in the last 24 hours, so I can't tell  
25 you whether that incident is detailed. Several incident



1 reports were a part of those records, and several inmate  
2 request forms with his requesting nursing assistance because  
3 of hallucinations and other symptoms. There was a suicide  
4 effort that was one of the write-ups. The records I got may  
5 have been provided to me before the incident that you're  
6 referring to, though. I'm not sure I have a record of that  
7 incident.

8 Q. Okay. But you've been made aware of that incident,  
9 haven't you?

10 A. I was told about it, yes.

11 Q. Do you know who Bill Parker is?

12 A. No, sir, I don't.

13 Q. Have you ever met Bill Parker?

14 A. No.

15 Q. Do you know that he's an investigator?

16 MS. BALIDO: Judge, may we approach the bench.

17 THE COURT: Counsel will recall the Motion in  
18 Limine and the Court's ruling.

19 Q. (By Mr. Davis) Do you know whether or not he acts  
20 as a private investigator for defense counsel?

21 A. I don't know.

22 Q. Do you know whether or not the defendant was  
23 scheduled to talk with Bill Parker that day?

24 A. I don't know that.

25 Q. Do you know the subject matter of that conversation,

1 what it was planned to be?

2 A. No.

3 Q. Do you know whether or not the defendant feigned an  
4 illness to avoid talking with Mr. Parker?

5 A. I don't know that.

6 Q. Do you know whether or not the defendant feigned a  
7 seizure in order to avoid talking with Mr. Parker?

8 A. No, I know nothing about the details.

9 Q. Doctor, would it be fair to say that this man,  
10 Jedidiah Murphy, looks at the world differently than most of  
11 us look at it?

12 A. Yes.

13 MR. DAVIS: Thank you, Doctor. I'll pass the  
14 witness.

15 MS. LITTLE: Your Honor --

16 THE COURT: You may continue.

17 MS. LITTLE: Your Honor, at this time I'd like  
18 to ask the Court to take judicial notice of a subpoena that  
19 was issued out of this court at my request for the custodian  
20 of records at the Van Zandt County Children's Center.

21 THE COURT: The Court takes judicial notice as  
22 presented.

23 MS. LITTLE: At this time I would offer the  
24 business records of that center, numbering 10 pages, signed  
25 by the custodian and offered and put into evidence, put in

1 the Court's file for offering prior to this trial. 10 pages.

2 MR. DAVIS: I have no objection.

3 THE COURT: Admitted.

4 (Records contained in Court's Jacket)

5 Q. (By Ms. Little) Dr. Connell, we did look at these  
6 while ago, did we not?

7 A. Correct.

8 Q. And you have not -- you didn't find those in your  
9 paperwork?

10 A. That's correct.

11 Q. But you do have Donnie's records; is that correct?

12 A. That's correct.

13 Q. Now, the answers, the information that's just been  
14 testified to about the experts in these -- according to these  
15 tests that you gave, are in part of your report; is that  
16 correct?

17 A. Yes, that information is in my report.

18 Q. Those things were considered?

19 A. Yes.

20 Q. And it's your opinion that what Jim Murphy told you  
21 was accurate, as far as you could determine, based on the  
22 collateral contacts you made and a number of other things  
23 that you did to try to corroborate what he was telling you;  
24 is that correct?

25 A. That's correct.

1 Q. Now, if he had more than one hand injury over a  
2 period of years, you don't know anything about that, do you?

3 A. No.

4 Q. Or do you?

5 A. No, I think I was aware of -- of two hand injuries,  
6 one that involved the staple gun nail -- nail gun going  
7 through his thumb and another that was on-the-job welding. I  
8 read some medical reports from his treatment for several job  
9 related injuries, and I think one of them involved his hand,  
10 one involved his back and/or hip, but I don't recall  
11 specifically. I can look those up if you'd like.

12 Q. No, that's all right.

13 Regarding -- there were several things that were  
14 read out of this report that the D.A. has offered into  
15 evidence. One that I recall is that you said there were four  
16 paragraphs left out shortly before page 6. Do you recall  
17 that?

18 A. Yes.

19 Q. Can you locate that information?

20 A. Yes. Okay.

21 Q. For the sake of completeness, what else would help  
22 the jury in understanding this testing?

23 A. Well, "That this man experiences repeated episodes  
24 of alcohol abuse may be reliably assumed. These bouts may be  
25 prompted in part by the frustration and disappointment in his

1 life. He is characteristically unpredictable, moody, and  
2 impulsive, and these behaviors may be intensified when he's  
3 drinking heavily. At these time, his brooding resentment  
4 breaks out of control, often resulting in stormy and  
5 destructive consequences. He may subsequently express  
6 genuine feelings of guilt and contrition, but the destructive  
7 and injurious effects of is behavior are likely to persist.  
8 Deep resentment that is restrained in his sober state may be  
9 unleashed in full force when he's drinking and manifests  
10 itself in irrational accusations and physical intimidation,  
11 if not brutality, toward family members. He may evince a  
12 self-destructive facet to his extropunitive hostility, and  
13 this serves to undermine both himself and others."

14 Q. All right.

15 A. I think that's essentially how I described him  
16 earlier. Also, in paragraph 2, seeing if there is -- if I  
17 can just kind of cut to the chase. "Shifts are probably  
18 evident between expressions of self-deprecation and despair  
19 that are mixed with thoughts of suicide and the expression of  
20 hopelessness and futility that may be accompanied by  
21 outbursts of bitter discontent and irrational demands.  
22 Circumstances may have imposed constraints beyond his  
23 manipulative abilities. He may also feel trapped and  
24 powerless to avoid raging inner tensions. Period of loathing  
25 for self-perceived deficits and weaknesses may be

1 interspersed with momentary acts of defiance, if not  
2 brutality. Fearful that he may jeopardize his problematic  
3 situation further, he may act contrite and self-accusatory  
4 following explosive acts. Nevertheless, his periodic  
5 grumbling and periodic provocations provide a vehicle for  
6 discharging tension, for reasserting self-confidence --  
7 albeit briefly -- and for relieving the buildup of resentment  
8 and anger."

9 Q. And regarding any substance abuse that was discussed  
10 in relation to these tests --

11 A. Uh-huh.

12 Q. -- to the best of your understanding from all the  
13 people that you've talked to, Jim Murphy's big problem is  
14 with alcohol; is that correct?

15 A. That's what I understand, yes.

16 Q. And there's no denying he's had experimentation and  
17 use of other drugs through the years?

18 A. That's correct.

19 Q. But these are not things he continues to do as far  
20 as anybody knows, as far as you know?

21 A. As far as I know, that's correct.

22 Q. And the purposes of these tests again, Dr. Connell,  
23 are what?

24 A. Well, I administered them in order to help myself  
25 gain an understanding of his view of his own functioning and

1 an understanding of how he compares to other people in  
2 similar situations. I didn't administer them for the  
3 diagnosis or treatment of a disorder, but just to give myself  
4 a sort of objective and normative feel for who it was that I  
5 was attempting to understand.

6 Q. Okay. And has your opinion changed any on what  
7 you've testified to about him and what he's told you? He's  
8 told you the truth essentially?

9 A. Yes, I think my opinion is still the same, that he  
10 was essentially truthful with me, quite self-deprecating, not  
11 attempting to blame anybody else for his own behavior. He  
12 generally was not the one who provided me with information  
13 regarding any kind of abuse history or suffering. He tended  
14 to represent the people in his past and in an essentially  
15 positive light with perhaps the exception of the Tolars.  
16 That he was taking full responsibility for what had  
17 happened. If anything, he was blaming alcohol for what  
18 happened. And I'm not sure I would express that exactly as  
19 blaming it as much as attempting to understand himself and  
20 allow himself to live with what he had done, and not very  
21 successfully at that. He was still suffering enormously over  
22 the guilt for what he had done and the shame for what he had  
23 done.

24 Q. And the report that you had provided to both me and  
25 the State, we've talked about that and you've testified from

1 it and I've questioned you from it; is that correct?

2 A. That's correct.

3 MS. LITTLE: May I approach the witness.

4 THE COURT: You may.

5 MS. LITTLE: At this time, Your Honor, subject  
6 to taking care of my own marks and everything, I'd offer  
7 Defense Exhibit Number 63, Dr. Connell's report.

8 (Defendant's Exhibit No. 63 offered)

9 MR. DAVIS: No objection.

10 THE COURT: Admitted.

11 (Defendant's Exhibit No. 63 admitted)

12 MS. LITTLE: Pass the witness.

13 MR. DAVIS: No further questions.

14 THE COURT: Thank you. You may step down,  
15 Doctor.

16 Ladies and gentlemen, the next witness I anticipate  
17 calling has been notified, will be an forensic psychiatrist.  
18 Been informed it's going to take a little bit of time to set  
19 up a display for your consideration.

20 Sheriff, if you'd excuse the jury.

21 THE BAILIFF: All rise.

22 THE COURT: Let the record reflect the jury is  
23 being excused from the courtroom.

24 (Jury excused from the courtroom.)

25 THE COURT: Mr. Murphy, counsel, visitors in



1 the gallery, may be seated or excused as you wish.

2 MS. LITTLE: Judge, also, and still on the  
3 record, I want to make two copies of this, one with the  
4 pictures that were admitted and ones that were not. The not  
5 admitted ones to be for record purposes.

6 THE COURT: Granted.

7 (Break taken.)

8 THE BAILIFF: All rise.

9 (Jury returned to courtroom.)

10 THE COURT: Let the record reflect the jury is  
11 returning to the courtroom at this time.

12 Jury may be seated.

13 Mr. Murphy, counsel, visitors in the gallery, you  
14 may be seated.

15 Ladies and gentlemen of the jury, this witness has  
16 previously been sworn in. He's under oath.

17 JAYE DOUGLAS CROWDER

18 was called as a witness by the Defendant and, after having  
19 been first duly sworn, testified as follows:

20 Direct Examination

21 By Ms. Little:

22 Q. Would you state your name, please, sir?

23 A. Jaye Douglas Crowder.

24 Q. And how do you make your living?

25 A. I am a psychiatrist.

1 Q. Here in Dallas?

2 A. Yes, I am.

3 Q. Where did you grow up, Dr. Crowder?

4 A. I grew up in Fort Worth and in Abilene.

5 Q. Where did you get your Bachelor's degree?

6 A. That was at Abilene Christian University.

7 Q. Did you go immediately from there to further  
8 schooling, or did you work?

9 A. No, I went on to medical school from there and did a  
10 residency after medical school at UT Southwestern Medical  
11 School here in Dallas.

12 Q. Then you decided to specialize in psychiatry?

13 A. Yes.

14 Q. And when did you complete that program?

15 A. The adult psychiatry residency was completed in  
16 1984, and then I did a fellowship in forensic psychiatry at  
17 the University of Virginia, completed in 1985.

18 Q. And you've been practicing psychiatry ever since  
19 that time?

20 A. Yes.

21 Q. Do you have a private practice, Dr. Crowder?

22 A. I see individual patients. I'm on the faculty of  
23 Southwestern Medical School and so I don't take the money  
24 directly. I don't have another outside office, but I do see  
25 individual patients in treatment.

1 Q. And how long have you been doing that?

2 A. That has been, of course, since 1985, since I joined  
3 the staff there.

4 Q. Do you hold positions in any professional  
5 organizations?

6 A. Yes, I'm vice chair of the Forensic Psychiatry  
7 Committee of the Texas Society of Psychiatric Physicians.  
8 I'm also a member of the American Academy of Psychiatry and  
9 the Law, American Psychiatric Association, and the American  
10 Medical Association.

11 Q. Do you have publications?

12 A. Yes.

13 Q. And are you licensed here in Texas?

14 A. Yes, I am.

15 Q. Did you evaluate Jim Murphy for us in regard to this  
16 capital murder case he's been tried for?

17 A. Yes, I did.

18 Q. Will you tell the jury, Dr. Crowder, what you did in  
19 order to be able to present any information to the jury?

20 A. Yes. I did examinations of Mr. Murphy on the  
21 following dates: The 8th of March, the 17th of April, the  
22 17th of May, and the 21st of this month, totaling about four  
23 and a half hours. I then reviewed a large number of records,  
24 investigative records, medical records from Glen Oaks  
25 Hospital, Timberlawn Hospital, Terrell State Hospital, the

1 Andrews Center, Terrell Medical Center, the Columbia Medical  
2 Center at Kaufman, the jail medical and psychiatric records  
3 from the Lew Sterrett Justice Center where he's been  
4 confined. I looked at the records from the Van Zandt County  
5 Probation Department, from the Dallas -- I'm sorry, from the  
6 Van Zandt County Children's Board regarding himself and his  
7 brother. And I did a number of collateral interviews, as  
8 well as looking at letters that he had written, and I can  
9 enumerate the people that I interviewed by telephone, if you  
10 like.

11 Q. No, let's go work through that.

12 A. Okay.

13 MS. LITTLE: Your Honor, at this time we'd  
14 offer Defense Exhibit Number 40, which is the vita of Dr.  
15 Crowder.

16 (Defendant's Exhibit No. 40 offered)

17 MR. DAVIS: No objection.

18 THE COURT: Admitted.

19 (Defendant's Exhibit No. 40 admitted)

20 Q. (By Ms. Little) With all of the things that you've  
21 looked at, Dr. Crowder, and all the collateral conversations,  
22 and as well as your conversations with Jim Murphy, what  
23 determination did you make regarding his problems?

24 A. I would diagnose him as suffering from what we call  
25 major depression and dysthymic disorder. That's simply a

1 complicated way of saying this is a person who's had  
2 depression for some period of time and it's a chronic  
3 depression that tends not to go away for very long at a  
4 time. In addition, he suffered from alcohol dependence.  
5 He's abused a number of substances in the past, though not so  
6 recently. I would also say that he suffers from a  
7 narcissistic and borderline personality disorder with some  
8 antisocial features.

9 Q. All right. Regarding -- did you mention the alcohol  
10 dependence?

11 A. Yes.

12 Q. Regarding the depression, what have you learned  
13 about him that leads you to form that conclusion?

14 A. Well, a number of different centers, such as  
15 Timberlawn Hospital, Glen Oaks Hospital, and Terrell State  
16 Hospital talked about these various kinds of depression. And  
17 in addition to that, of course, he meets the criteria that we  
18 set up with a diagnosis of this condition which are sad mood,  
19 appetite changes, sleep changes, feelings of fatigue,  
20 worthlessness, and suicidal thinking, which qualify him for  
21 that diagnosis.

22 I want to clarify something about depression.  
23 Depression is not being merely unhappy with one's  
24 circumstances, but the chemistry in the central nervous  
25 system so that sleep, appetite, and other functions,

1 concentration are interfered with.

2 Q. All right. And what about, did you -- did you  
3 discover if there was any attention deficit disorder?

4 A. That's mentioned in the records, and he complained  
5 of some features of that. As people get older, they  
6 sometimes tend to grow out of that. It was frankly difficult  
7 for me to tell whether he met criteria for that, but there  
8 were diagnoses of attention deficit disorder in the Terrell  
9 State Hospital records, for instance.

10 Q. What do you attribute his depression to?

11 A. Well, there are a number of factors. There's a lot  
12 of mental illness and alcohol abuse in his family. In fact,  
13 it's kind of right in the family. So some of it is probably  
14 inherited because there's a genetic predisposition to  
15 suffering from depression. In addition to that, of course,  
16 early childhood experiences and losses of parenting figures  
17 contribute to a person developing depression later. So the  
18 abandonments by his mother, his father's death, moving from  
19 one residence to another on multiple occasions through  
20 childhood, all of that serve to give him a less than secure  
21 sense of himself and a secure -- less than secure sense of  
22 where his needs would be met and how he would meet his needs  
23 in life.

24 Q. And where did you get the information about those  
25 factors you just testified to?

1       A.   Well, it was from a number of sources. I counted 13  
2 collateral interviews that I did, so these are other people  
3 that gave me information about his childhood. I also have  
4 the records from these various hospitalizations and from the  
5 Van Zandt County Children's Shelter which gave me  
6 information, as well as the reports that he gave me himself  
7 in my interviews.

8       Q.   All right. Did you read any literature in order to  
9 help you with these diagnoses?

10      A.   Yes.

11      Q.   What literature did you review?

12      A.   Well, I looked at a number of textbooks, and I also  
13 looked at the DSM IV which is our standard diagnostic  
14 system. It's lays out the criteria for diagnosis of various  
15 disorders.

16      Q.   And did you bring transparencies for those here  
17 today?

18      A.   Yes.

19      Q.   Would you like to do that now?

20      A.   Sure. Simply start with an excerpt from this book,  
21 which is about criminal behavior and what's known as  
22 psychopathy, which I don't believe that Mr. Murphy really  
23 suffers from.

24      Q.   Just a second. Be sure everybody can hear. You  
25 said -- you're talking about psychopathy and you don't --

1     excuse me, believe that Mr. Murphy suffers from that; is that  
2     correct?

3             A.     Correct.

4             Q.     Go ahead.

5             A.     Nevertheless, of course he's had some criminal  
6     behavior. And we need to look at what might account for some  
7     of that. It looks like this is way too big.

8             Q.     Not quite far enough to the right. Okay.

9             A.     Technology is not pretty.

10            Q.     It's prettier than what we tried to do this morning  
11     with the power point.

12            A.     I suppose. That's why I try to get low tech.

13                   All right. What we have here is the risk of crime  
14     for children who are reared without fathers, which we know  
15     applies to Mr. Murphy. There's a higher risk of crime in  
16     those situations. I would direct your attention to this  
17     study. Youngsters grades 6 to 8, living in one parent  
18     families, twice as likely as those from two parent families  
19     to use illegal drugs, to be sexually active, to engage in  
20     vandalism, to skip school frequently, and to steal things  
21     from stores. Single parent children were also twice as  
22     likely to have used a weapon at least twice to get something  
23     from another person, to have been in trouble with the police,  
24     to have been physically or sexually abused by an adult, and  
25     to plan on quitting school before graduation.



1           Then I would direct your attention down here, just a  
2 little bit lower on the page. In 1986, of the juveniles  
3 incarcerated in the United States for serious crimes, about  
4 70 percent had been reared without fathers. This 70 percent  
5 figure seems to be a magic number because there are multiple  
6 studies that say of teenagers that ran away from home, 72  
7 percent came from single parent homes and that's usually  
8 without fathers. All the way down to -- here's a study of  
9 135 children referred for crimes ranging from arson,  
10 vandalism, and theft, to assault and burglary and criminal  
11 sexual conduct. This is youngsters 9 or younger. 70 percent  
12 of these children were living in a single parent home.

13           What's the significance of this? The significance  
14 is people that do not grow up with a father figure a lot of  
15 time do not internalize as much of a moral sense as many  
16 other people do. That's part of it. The other part of it is  
17 there's a lot of insecurity because you don't necessarily  
18 feel loved or cared for and you don't know who's going to  
19 take care of you.

20           Mr. Murphy went through about five, six homes, I  
21 think, different homes and couldn't stay for a variety of  
22 reasons. Generally not his fault that he couldn't stay in  
23 those homes, but someone would abandon him or it was  
24 difficult to deal with his brother, but he was moved from  
25 place to place. In fact, he grew up with three different

1 last names. His first last name was Kines. Then he was  
2 adopted to the Tolars and he took that name. Then he had a  
3 third name Murphy that he grew up with.

4 Part of the borderline personality disorder  
5 diagnosis is a sense of poorly formed identity or not knowing  
6 who you are. It's difficult to know who you are when you  
7 have all these different names, all these different homes,  
8 and you're not sure that you're loved. That's unfortunately  
9 what we have in Mr. Murphy's case is someone who never really  
10 felt love because his mother abandoned him. I think you know  
11 most of the story. His parents -- grandparents then took  
12 over. They died, so they abandoned him in another sense. He  
13 then goes to Buckner Children's Home. He then goes to  
14 another home for a brief period of time where another child  
15 could not adjust to him. And then he goes to the Tolar's.  
16 Then he goes to the Murphy home. This is a lot of  
17 instability for a youngster, and people like this tend to  
18 grow up somewhat angry because they don't feel they can trust  
19 life. They don't feel that they can trust authority figures  
20 to take care of them.

21 Q. Okay.

22 A. Skip over that. Just to give you a point of  
23 reference, this is from a particular textbook of psychiatry  
24 by Tasman and Kay. It's Volume 2, just to give you an idea  
25 where it's from.

1           And here we have something about the biology of  
2 aggression. You can read this if you want to. I don't know  
3 that I'm going to bore you with it, but I'll tell you what  
4 this says. What it talks about is that people with  
5 aggression both to themselves and others, and this is  
6 impulsive aggression as opposed to predatory aggression,  
7 people with that kind of aggression tend to have lower levels  
8 of a particular neurotransmitter -- that's a brain chemical  
9 that tells parts of the brain to turn on or turn off. They  
10 have lower levels of this particular neurotransmitter called  
11 serotonin in their central nervous system. That's what we  
12 have here is an impulsive person that hurts himself and other  
13 people. Both suicide victims and people who commit impulsive  
14 aggression have lower levels of this hormone.

15           So now we've got two factors. What we're going to  
16 see here is the coming together of multiple factors which  
17 resulted in a lot of tragic circumstances. It's not one of  
18 them by themselves. It's all of them together. Have  
19 insecurity, have a lot of anger about the lack of a stable  
20 upbringing, you have lower levels of serotonin in the central  
21 nervous system, and you don't have a father figure to  
22 identify with so far.

23           Here is another factor in impulsive aggression that  
24 we see. What this talks about is brain imaging studies.  
25 These studies look at the utilization of glucose which is the

1 basic food -- food for thought, if you will, that feeds your  
2 brain and helps it to operate.

3 Now, what you see here is brain imaging studies with  
4 positron emission tomography -- don't even try to remember  
5 that -- have found selective reductions in glucose,  
6 metabolism, and the pre-frontal and frontal cortex of  
7 patients with impulsive aggression. In other words, the  
8 frontal lobes of the person that commits impulsive aggression  
9 tend not to use glucose appropriately. They tend to be  
10 turned off to a degree so that they don't feel things or see  
11 things quite as the rest of us do. And that contributes,  
12 it's believed, to the impulsive aggression.

13 Now, what about alcohol? Start to add alcohol to  
14 this mix, and you have a problem. When people are  
15 chronically miserable because they're depressed, they tend to  
16 want to in an impulsive fashion assuage that depression and  
17 overcome the misery and the anxiety that they feel on a daily  
18 basis with substance abuse. Mr. Murphy's choice of substance  
19 was alcohol. That's how he got over the problems that he had  
20 temporarily, but of course it caused longer term problems in  
21 the outcome in the end.

22 Mr. Murphy seems to fall into what's known as a Type  
23 2 alcoholic. They have trouble stopping drinking because  
24 they have an absence in the guilt -- of guilt and anxiety  
25 about it, even though they might have a lot of remorse about

1 the results of it. They have trouble. They have a very  
2 early onset. Indeed he starts drinking at age 13 to 14 years  
3 of age, and they have a tendency -- you see down here --  
4 inability to abstain from alcohol, frequent fighting, and  
5 arrests when drinking and the absence of guilt and anxiety  
6 concerning drinking. Kloninger postulated the transmission  
7 of alcoholism in Type 2 alcoholic people was from fathers to  
8 sons. Hence, the term male limited alcoholism. That's what  
9 we see here, because Mr. Murphy's father was a highly abusive  
10 man who committed criminal acts while he was drinking and  
11 indeed other members of the family, including his own father,  
12 were also alcoholics. So what you have here is a -- really  
13 an expression of what Kloninger talks about as male limited  
14 alcoholism, which has early onset, they have trouble  
15 stopping, and they tend to get more aggressive when they're  
16 drinking. The corollary to this is you take the alcohol  
17 away, then they tend not to be as aggressive and indeed the  
18 collateral interviews that I did with other people, such as  
19 his common law wife, Chelsea Willis, reveal that he was much  
20 less aggressive when he was not drinking.

21 Here we have just another section that talks about  
22 alcohol and drug abuse. Alcohol is well known for its  
23 association with violence through its ability to lessen  
24 inhibition against antisocial and violent behavior and to  
25 decrease perceptual and cognitive alertness with resulting

1 impairment of judgment. A number of epidemiological studies  
2 have found a strong link between alcohol use and certain  
3 types of homicide involving disputes. It goes on to talk  
4 about other drugs.

5 But the important thing to remember is there is a  
6 link between alcohol and aggression because it disinhibits  
7 people. It makes them more likely to do what their impulses  
8 command them to do, so people that are drinking can be very  
9 different than people who are not drinking. So here we have  
10 all these factors coming together. You have a nasty  
11 childhood. You have a loss of father figure. You have  
12 impulsive aggression and self-destructiveness, including  
13 suicide attempts. And he also would cut on himself and burn  
14 himself. This is documented in records before he was ever  
15 arrested for capital murder. He would actually burn himself  
16 or cut on himself to relieve pain or anxiety or internal  
17 distress. You have somebody who is a miserable human being  
18 basically, whose brain isn't quite right because it doesn't  
19 have enough serotonin and the frontal lobes don't work  
20 appropriately, and then he tries to fix that with alcohol  
21 which causes a further problem and that's disinhibition or  
22 loss of inhibition aggressive impulses. So you have a recipe  
23 for disaster here unfortunately and that's I think a lot of  
24 what happened. We know he was at least drinking some on the  
25 day that this tragedy occurred.

1 Here's another factor in what we're looking at.  
2 This is related to what happens in one's environment. I  
3 think I'll go up here. I think anyone would agree that this  
4 child, Mr. Murphy, was exposed to a lot of abuse and neglect  
5 as a child. This is the result, profound changes in affect  
6 regulation. That means the regulation of mood and  
7 self-identity have long been noted in the clinical and  
8 research literature on childhood victims of interpersonal  
9 trauma. Most noteworthy is the consistent finding that  
10 childhood victims of neglect, physical abuse, and sexual  
11 abuse, or a combination, are at much greater risks for  
12 extended periods of anger unmodulated aggression,  
13 apprehension, guilt, and fear, alterations in their personal  
14 relationships to caregivers, and difficulty with intimacy.  
15 Virtually all of the nine criteria for borderline personality  
16 disorder are noted in childhood victims of abuse, and I won't  
17 go through it, but basically it talks again about affective  
18 dysregulation or the fact that the emotions don't respond  
19 normally. And there's a lot of anger when people have been  
20 abused as children.

21 Fortunately, there's some hope here. This is the  
22 course and prognosis of borderline personality disorder. It  
23 varies considerably, but most chronically there is -- most  
24 commonly there is chronic instability in early adulthood with  
25 episodes of serious affective -- that's emotional -- and

1 impulsive discontrol and extensive use of health and mental  
2 health resources. Impairment from the disorder and the risk  
3 of suicide are greatest in the young adult years and  
4 gradually wane with advancing age. During theirs 30's and  
5 40's most individuals with this disorder gain stability in  
6 their relationships and vocational functioning. Thus  
7 borderline personality disorder tends to somewhat slowly  
8 remit over time. It does help to contain them in a  
9 controlled environment to prevent further acting out.

10 I think that's what I have with literature. I have  
11 some other materials from the medical records and stuff.

12 Q. Okay. Well, let's talk about the medical records.  
13 Are you referring to the psychiatric attempts that he's made  
14 to get help for himself?

15 A. Yes.

16 Q. And you've named -- you've numbered many papers that  
17 reflected treatment that he had attempted to do. Overall was  
18 he successful at all in those attempts to get treatment?

19 A. Not very successful. He frankly says that his  
20 motivation was at times lacking. It would come. It would  
21 go. He actually joined Alcoholics Anonymous and was able to  
22 maintain sobriety for a period of months, I think it was at  
23 one point, but the temptation to go back and drink was too  
24 strong, and he went back and did it despite knowing that it  
25 was destructive to his family, his common law wife, and his



1 daughter to do that. So he had some success with that, but  
2 at the same time he frankly admits, like many alcoholics,  
3 that he had trouble being motivated to stop drinking at times  
4 as well.

5 Q. Now, in these treatment centers where he went --  
6 let's sit down for a minute, shall we?

7 A. Sure.

8 Q. In these treatment centers where he went, he would  
9 tell himself; is that correct -- I mean, he would tell the  
10 people where he was what his problems were?

11 A. Absolutely.

12 Q. And what was the first time period that he went to a  
13 place that you know of?

14 A. I think that was 1997, if I'm not mistaken.

15 Q. And what precipitated his going to that place?

16 A. He was admitted to Glen Oaks Hospital because he was  
17 seeing hallucinations of snakes. It looks like on that  
18 occasion he was probably using amphetamines that caused him  
19 to have hallucinations.

20 Q. And -- but it did send him for treatment?

21 A. Yes.

22 Q. And what happened while he was there?

23 A. He had something of a difficult time with it. They  
24 put him in groups in which people talked about sexual abuse.  
25 And he had complained about sexual abuse being perpetrated by

1 Terry Tolar, one of his stepfathers that he had been adopted  
2 to. I don't know that we'll ever know whether that happened  
3 or not, but I do know that he was very distressed in the  
4 groups when that subject would come up and that would lead  
5 him to be aggressive at times or angry at times and he  
6 actually had a scuffle with one of the staff members at the  
7 hospital.

8 Q. That was in '96; is that correct?

9 A. You know, forgive me, the dates are alluding me a  
10 little bit. I think this is '97 or '98. It might have  
11 been '99 even because there are several hospitalizations that  
12 cluster together.

13 Q. But this is previous to the case we're here about  
14 today?

15 A. Oh, absolutely.

16 Q. During his time there, do you recall about how long  
17 he stayed at the first treatment?

18 A. It was only a few days, as I recall. He left and  
19 then he came back because he was seeing snakes again.

20 Q. And he saw at that time and all of his future trips  
21 to the mental hospitals various psychiatrists, did he not?

22 A. Yes, he did.

23 Q. And in the course of those, not only the first one,  
24 but the one subsequent to, were the diagnoses similar from  
25 those doctors at those hospitals?

1       A.    There were a number of diagnoses that were given,  
2   depression, dysthymia, which would be consistent with my  
3   diagnoses and he was given a diagnosis of what used to be  
4   called multiple personality disorder. I disagree with this  
5   diagnosis, but he was given this at one point. Most people  
6   said there was depression and most everybody noticed the  
7   substance abuse.

8           Terrell State Hospital mentioned the possibility of  
9   borderline personality disorder.

10       Q.   Okay. And what -- why do you think that the multi  
11   personality disorder is not a correct diagnosis?

12       A.   That was based largely on Mr. Murphy's report that  
13   he could not remember periods of time. The problem with that  
14   kind of thinking is that he's an alcoholic and alcoholics are  
15   prone to blackouts. It's very well known when they drink  
16   heavily, they don't remember what goes on. And it seems to  
17   me there was no effort to distinguish this uncommon  
18   phenomenon of multiple personality disorder from the very  
19   common phenomenon of alcoholic forgetting and blackouts.

20       Q.   Okay. Did he have this sort of problems when he was  
21   there in that first treatment that you recall?

22       A.   Well, he did, he was -- he was irritable at times.  
23   And I'm not remembering whether it was the first or the  
24   second hospitalization at Glen Oaks, but he got somewhat  
25   aggressive with one of the staff members who held on to him.

1 He had been very upset about what had gone on in one of the  
2 groups about sexual abuse.

3 Q. Okay. He was never put out of any of these places  
4 though as far as being discharged as a danger to anybody, was  
5 he?

6 A. No, that's the interesting thing. I know of  
7 psychiatric hospitals doing that sometimes, discharging  
8 people that they feel are dangerous or for whom they have a  
9 fear for the other patients or staff members, but in this  
10 case they chose not to do that.

11 Q. To your knowledge, did any of these places diagnose  
12 narcissism?

13 A. No.

14 Q. Did any of them diagnose borderline personality  
15 disorder?

16 A. Yes, they did. As again, I said Terrell State  
17 Hospital said rule out borderline personality disorder which  
18 means we think it might be there, but we're not absolutely  
19 sure so we're not going to commit to the diagnosis.

20 Q. Did anybody ever say that he had antisocial  
21 personality disorder?

22 A. No.

23 Q. Would it be fair to say that because he continued to  
24 put himself into these places that were supposed to help him  
25 mentally, whether he stayed or not, whether he could follow

1 through or not, he is a most miserable person who is trying  
2 to do something?

3 A. Right. I think it's clear he lead a really  
4 horrendous life. He felt good and he felt taken care of when  
5 he had a relationship with somebody like Chelsea Willis, but  
6 he had -- I'm sure there was a certain amount of jealousy and  
7 a need to control and a need to make sure she was going to be  
8 there. That always relates to problems. And then of course  
9 he would drink and he would become aggressive with her.  
10 There's no question he would fight with her. She told me  
11 about it. He broke her nose on one occasion. However, he  
12 was most aggressive when he was drinking, and it was seldom  
13 when he was not drinking in that relationship.

14 Q. Okay. What slides did you bring regarding the  
15 mental health care?

16 A. I actually had some others about the stay at the  
17 children's shelter you may want to look at some point. Do  
18 you want to do that, or do you want to do the medical?

19 Q. Let's do the medical records first, and then we'll  
20 go backwards.

21 A. I can tell you about some of these records -- see if  
22 we can't make this work. Perhaps you want to work with it.  
23 You look far more adept than I am.

24 Q. And do word processing, too.

25 A. As a psychiatrist, I don't get a lot of offers to be

1 a mechanic in the garage, my abilities to work with  
2 machinery.

3 Well, I'll just go through some of these.

4 Q. Okay.

5 A. This particular record from -- comes from Glen Oaks  
6 Hospital, is in 1999. It simply talks about the depression.  
7 It says that he cries when he talks about his social history,  
8 his history of his wife and his child. It says his mood and  
9 affect is very depressed and he has a restricted affect.  
10 That is his facial expression seems kind of shut down by what  
11 he's experiencing.

12 What else you see in this record is -- I might as  
13 well sit down, I suppose.

14 Q. Okay.

15 A. You see checkmarks on impaired coping skills which  
16 means he doesn't have much resilience when it comes to  
17 stressors or problems. People with depression just don't  
18 like difficulty. Some of them get so bad they don't like to  
19 hear the phone ring or the door bell ring because they'll  
20 have to go answer it. That's an obligation, and they just  
21 get so energy less, they don't want to deal with it. So he  
22 has impaired coping skills. He has stress intolerance.  
23 According to the Glen Oaks staff. And he has impaired social  
24 or interpersonal skills. What this means is he doesn't know  
25 how to get his needs met in relationships and therefore he

1 tends to drink or be manipulative and that's what he learned  
2 in childhood to get by is being manipulative or dishonest.

3 Here's another notation on the 28th of August 1999.  
4 Staff found him in the bathroom on the floor in a fetal  
5 position, very frightened. He was seeing snakes at the time.

6 On the 30th of August he talked about a sense of  
7 shame and embarrassment about his past abuse. He said he was  
8 struggling with anger and rage surfacing which reminds him of  
9 his dad who he doesn't want to be. So even then he was quite  
10 aware of how abusive and aggressive his father was and he  
11 didn't want to be like him.

12 Also, on the 30th, you have patient attempted to  
13 process his anger from yesterday. They're trying to get him  
14 to work through the anger and to deal with it, but tended to  
15 deny the emotion, began to be anxious, and then left the  
16 group due to hallucinations in response to a female  
17 describing abuse or being abused. Again, I can't tell you  
18 that he was or wasn't abused. What I can say is when abuse  
19 came up in these groups that he would attend, it was very  
20 disturbing to him which suggests at least he believed he had  
21 been abused by people in the past.

22 He stated he couldn't tolerate discussions of child  
23 abuse. I get too angry and ran from the group. He was  
24 isolated and tearful after that.

25 Here's another notation, also from the 30th, same

1 group. Tends to get angry and obsess or discuss -- sorry, in  
2 the discussion of sexual abuse with the group.

3 Also, on the 31st of August of 1999: If this is how  
4 I'm going to have to live, I don't want to live. If this is  
5 how I'm going to live, I don't want to live. That's when he  
6 made some suicide attempts because he's miserable.

7 And here's a time he's trying to control his anger  
8 on the 2nd of September. He said he left the group because  
9 he didn't want to hit anyone. He was afraid he would because  
10 he was so upset about what they were discussing. He said,  
11 I'm afraid somebody will get hurt. And the next -- the next  
12 notation within two or three hours is he's kicking a trash  
13 can, the staff member asks him to stop, he charges the staff  
14 member, he takes a swing at the staff member, and the staff  
15 member holds on to him. Later on, he seems to calm down and  
16 he's okay. The pattern tends to be that he apologizes later  
17 for the -- for the aggression that he committed, but at the  
18 time, you know, he gets very enraged, he's kind of out of  
19 control. There doesn't seem to be a sustained effort to  
20 really hurt this person. He takes a swing, and then it's  
21 over.

22 On the 6th of September of 1999, he was found under  
23 the sink talking about snakes, apparently hallucinating  
24 again. And he was verbally aggressive with the staff because  
25 he's very -- he's unstable again because of the



1 hallucinations. Then he's physically aggressive to the staff  
2 again when they had to forcibly remove him from a closet  
3 where he was hiding. And yet no one appears to have been  
4 hurt on that occasion. Gave him medication. He apologized  
5 later for the aggression.

6 Q. An he was not put out of that place at all, was he?

7 A. He was not put out, no.

8 The Andrews Center, which was an alcohol treatment  
9 center, notes that he cuts or he burns himself when he's  
10 upset. This again, is one of the criteria of borderline  
11 personality disorder. This again, pre -- pre-dates his  
12 arrest for capital murder.

13 Here's a notation from the Andrews Center about two  
14 years ago. Walked into the facility in crisis. He tried to  
15 overdose the night before after his wife left him. And  
16 that's a lot of what we deal with. When there's an  
17 abandonment, again, he's going to be very sensitive to that.

18 I want to mention one other item, and that is a risk  
19 assessment form done by the Probation Department. And what  
20 it says is that there is a probable relationship between  
21 alcohol use and criminal activity. So even the Probation  
22 Department could recognize that there was -- there was a  
23 relationship between his alcohol use and the criminal  
24 behavior that he committed from time to time.

25 Q. Okay. Is that all you have on the medical records

1 that you wanted to bring up?

2 A. Yes.

3 Q. Now, you've testified that a lot of the problems  
4 came from the dysfunctional homes he was in and how many  
5 homes he was in. And you know that he had a brother Donnie  
6 who went with him up to the point that they lived at the  
7 Tolar's and then went to the Van Zandt County Children's  
8 Shelter; is that correct?

9 A. That is correct.

10 Q. Did you look at in your attempt to figure out what's  
11 happened to Jim Murphy's life, Donnie's records from the Van  
12 Zandt County Children's Center?

13 A. Yes. Contains a lot of information about Donnie --  
14 I mean about Jim and the family of origin.

15 Q. And what can you tell the jury about that that might  
16 aid them in understanding what's happened here?

17 THE WITNESS: We have an actual overhead  
18 projector again?

19 MS. BALIDO: We do.

20 MS. LITTLE: It works now?

21 MS. BALIDO: This one does.

22 MS. LITTLE: Good girl.

23 JUROR: Do the mirror.

24 (Counsel setting up projector)

25 MS. BALIDO: Y'all are so good. That is why I

1     went to law school.

2                     THE WITNESS: I've got to say I'm through.

3             A.     Okay. Okay. Here we have some of the records from  
4     the Van Zandt County Children's Shelter where Mr. Murphy and  
5     his brother Donnie were placed after the Tolars felt they  
6     couldn't handle mainly Donnie. He was punching holes in  
7     their wall and breaking windows and that sort of thing.

8             I think this shows you some of the mentality of a  
9     child who feels rather abandoned. Donnie states he never  
10    wants to be adopted again and wants to stay with the Kings  
11    until he's 18 years old. He said Mrs. King told him he could  
12    do this. Despite my explanation, Donnie still wants this  
13    placement to last until he's 18. He doesn't want anymore  
14    instability. It's difficult for him. So he wants to stay  
15    with the foster family, the Kings. Donnie is particularly  
16    angry because he was promised by the Tolars that he and his  
17    brother Jim Tolar were a package deal and they would not ever  
18    be separated. However, Jim is now living with a teacher from  
19    his school, the Murphys in Edgewood, Texas. Donnie feels his  
20    brother's affections were bought off because the Murphys have  
21    provided very well for Jim so far. All right.

22             He doesn't want anymore instability. He feels lied  
23    to by people. That's somewhat subjective probably. I'm not  
24    sure it's all necessarily true, but when you get angry when  
25    you're a child and you don't understand why you don't have a

1     stable home, you start to blame people and think they must be  
2     doing something behind the scenes to manipulate you.

3             Here's one other thing. This is about the home  
4     environment that Mr. Murphy grew up in. His father also gave  
5     him some whiskey -- this is talking about Donnie, not Jim,  
6     but you can see what kind of father we might be dealing with  
7     here when he gave his son whiskey and indeed this was  
8     confirmed by Pam Sherman in my conversation with her.

9             This particular sheet talks about the environment  
10    that both of these boys had felt with -- or had dealt with  
11    growing up. For having experienced so many losses,  
12    disappointments, and rejections in his lifetime already,  
13    Donnie exhibits a great strength, positive attitude,  
14    etcetera, so he's easy to get to know and like. And he's got  
15    some strengths, yet at the same time during the three years  
16    that Donnie lived with the Tolars, he was described as being  
17    defiant and having an uncontrollable temper and failed a year  
18    in school. Since being at the Van Zandt Shelter with the  
19    Kings, Donnie's behavior has greatly mellowed. His grades  
20    have improved, and he has not been in any serious trouble at  
21    the Fruitvale schools. That's interesting because it tends  
22    to verify that maybe the Tolar's environment was not great  
23    because Donnie calms down a great deal after he comes to the  
24    Kings for the foster parenting.

25            Here you have Donnie being upset that the Kings

1 might leave. And he told Mrs. King how much he loved her.  
2 This is Donnie. And seemed to be asking her to reassure him  
3 that that was important to her. This is -- this is a child  
4 who has been sent from many -- from one location to another,  
5 from one home to another, do you really love me. He  
6 compensates with anger. He compensates with aggression. He  
7 acts out because he's unsure that anybody loves him. You see  
8 the underlying dynamic here which is the same as with Mr.  
9 Murphy, lots of anger on the surface, underneath the kind of  
10 pathetic wish that someone would care about him, because he's  
11 not sure anyone ever did.

12 This particular piece of an evaluation, also with  
13 the Van Zandt County Children's Shelter, tells you about the  
14 environment that both of these boys came from. Again,  
15 talking about Donnie, but it's the same environment that he  
16 and Jim grew up in. Donnie's emotional development was  
17 structured by a lifetime of disappointment and abandonment.  
18 His natural mother left him when he was a baby. His father  
19 abandoned him in everything else by drinking himself to  
20 death. His grandparents became ill and died. And the Tolar  
21 offered him and his brother a home, but he could never attach  
22 himself to him. Now his brother is gone, as they say here.

23 You look down a little bit. This is exactly the  
24 same pattern you see with Mr. Murphy. It seems that Donnie  
25 was defiant and balked at the authority of the Tolars. The

1 Kings observed that Donnie does not like to abide by the  
2 rules and keep angry -- gets angry and goes into his room,  
3 shuts the door, and turns the radio up full blast, but he  
4 will eventually calm down, do as expected, apologize, and say  
5 he loves them, the Kings, and it will be over with. It seems  
6 Donnie is coming to appreciate restrictions and respect  
7 authority now more than he's with the Kings. In other words,  
8 again, it looks like it's a better environment than the  
9 Tolars where they had been before. Exactly the same pattern  
10 as with Jim. You get angry because you don't feel loved and  
11 later you apologize and want to be taken back. That's not  
12 very good. Basically what it says is the father was known to  
13 be a chronic alcoholic to these evaluators.

14 This is something else that both of these boys  
15 seemed to do. This patient evidences a rather long-standing  
16 depression which appears to arise from frustrated attempts to  
17 get his emotional needs met. The recent series of rejections  
18 and losses he has experienced seems to have punctuated his  
19 inner distress causing a sense of internal agitation and  
20 disequilibrating emotion. Disequilibrating means you feel  
21 off balance. You don't know what's going to come next  
22 because people reject you willy-nilly. Because he does not  
23 have the cognitive skills needed to think through problems,  
24 he will act out unmanageable distress impulsively and  
25 aggressively. You get distressed because you don't feel good

1 on the inside and they act aggressively. Less agitating  
2 emotional pain be covered and denied as when he struggles to  
3 maintain a cover facade of inadequacy. In this context he  
4 will insist that no one can hurt me as he did during the  
5 clinical interview. Boasting, bragging, or overcompensating  
6 for feelings of inadequacy may emerge as well. This is where  
7 the narcissistic personality disorder I was talking about  
8 comes in. People with narcissistic personality disorder,  
9 unfortunately many doctors and many lawyers are like this,  
10 have a sense of inadequacy underneath and they try to cover  
11 it up by looking powerful, together, strong, nothing can hurt  
12 me. And underneath they feel somewhat vulnerable here, and  
13 that's what you have here, somebody who wants to look  
14 powerful. Unfortunately, their own needs are so great, they  
15 tend to neglect the needs of others and it hurts their  
16 empathy for other people at times. Nevertheless, they  
17 maintain some ability to have empathy and care about other  
18 people, especially other victims because they identify with  
19 them.

20 I won't show you this one. Basically Donnie was  
21 saying that he bought some shoes with his own money that  
22 other people bought for him. It's an example of this  
23 narcissistic bragging to feel good about yourself when really  
24 you don't underneath.

25 Okay. This is important here. What's happened here

1 is that Jim has been placed in a home and Donnie is left in  
2 the shelter and he's upset about this. It says here that  
3 this evaluator believes this an advantage for Mr. Murphy,  
4 Jim, because Donnie tends to be domineering and threatening  
5 to him. So here's another form of abuse to some extent that  
6 Mr. Murphy had to endure growing up. And unfortunately, he  
7 was almost the only person he could attach to because his  
8 brother was a consistent presence in his life.

9 I'm not turning it off this time.

10 Q. (By Ms. Little) Okay. Let's sit down, though. Did  
11 you talk to the Tolars, either one of them, Dr. Crowder?

12 A. I did.

13 Q. And what did you discover in your conversation?

14 A. What I discovered was that they perceived Donnie was  
15 the main problem. He had been very difficult to control.  
16 What Mr. Tolar said was had it not been for Donnie's acting  
17 out, but they would have kept Jim, but that they gave Jim a  
18 choice to stay with his brother or to stay with the Tolars  
19 and he chose to stay with his brother instead.

20 Q. Even though his brother picked on him and stuff, he  
21 clung to that brother?

22 A. Only constant presence in his life. He's the only  
23 one that had been there all this time.

24 Q. Did you talk to Hope Abbott?

25 A. Yes, I did.



1 Q. Well, let me go back to the Tolars. Did you talk to  
2 Terry Tolar or Celeste Tolar?

3 A. I talked to Terry.

4 Q. Was there anything else in that household that you  
5 could confirm or refute any of the allegations that you  
6 discovered from talking to the Tolars, or anyone else for  
7 that matter?

8 A. I really couldn't. Again, there's some suggestion  
9 that even the foster parents, the Kings, were better parents  
10 because Donnie's behavior settled down. Other than that, I  
11 can't confirm. Mr. Tolar said he knew, and I didn't ask him  
12 this, but he said he knew there had been allegations he had  
13 sexually abused Jim, and he said -- he just spontaneously  
14 told me that that wasn't true, they had a good environment,  
15 that they cared a lot about him, and Jim had not been much  
16 trouble to them.

17 Q. And did Jim get in trouble outside of that home?  
18 Did he show any signs that he was going to turn out to be a  
19 big whopping antisocial personality disorder later?

20 A. I would not use those terms, but, no, he didn't show  
21 any signs of that really. He was, I think, a little  
22 difficult to handle when he was transferred to the Van Zandt  
23 County shelter, but he didn't really show a great deal of  
24 behavioral problems when he was growing up. He did start  
25 drinking at an early age, but I couldn't really find anyone

1 that said he had a lot of problems. He did tell some lies at  
2 times, some of which were designed to make him appear more  
3 important, like he would say my dad owns this piece of land  
4 or that sort of thing. It seemed to be to make him look more  
5 important. Some of the other lies he would tell at times  
6 were to avoid responsibility for problems, so he did have  
7 that. Those are about the only behavioral problems I could  
8 detect until he was about 17 or 18 years old.

9 Q. All right. Did you talk to anyone in the schools  
10 where he attended?

11 A. Yes, I did.

12 Q. Who did you talk to?

13 A. I talked to a Mr. and Mrs. Shellnut and to a  
14 Catherine Bunts (phonetic). Mr. Shellnut had been -- I think  
15 he's a superintendent now, but he had been a principal, and  
16 his wife, Nita Shellnut, had been one of Mr. Murphy's  
17 teachers and Catherine Bunts had been one of his teachers,  
18 too.

19 Q. What did you find from them?

20 A. What I found was that he didn't give them a lot of  
21 trouble and he seemed to be something of an unhappy child, or  
22 a child that exhibited a certain amount of inner tension.  
23 Teachers come to recognize this sort of thing, and they  
24 recognized him as being an at risk child in that sense.

25 Q. Did they know him when he was a child with the

1 Tolars or an older child with the Murphys?

2 A. That would have been just when he had moved to the  
3 Murphy's from the Tolar's.

4 Q. Or from the shelter?

5 A. From the shelter, true.

6 Q. And they -- but they did say that he puffed and  
7 bragged and tried to build himself up?

8 A. Yes. Mr. Shellnut recalled an incident where that  
9 happened.

10 Q. Did he recall anything about how Jim responded if he  
11 got in trouble about lying or anything?

12 A. He would sometimes be dishonest about that and try  
13 to avoid responsibility. He also said however he was never  
14 an aggressive child. He was in fact -- mousy was the word  
15 Mr. Shellnut used to describe him. And he never expected  
16 this kind of outcome in Jim Murphy's life.

17 Q. What about Ms. Bunts?

18 A. It was a similar sort of thing, didn't give me a lot  
19 of trouble. I wouldn't have thought this would have  
20 happened. We were shocked that it did.

21 Q. So all the information from these school personnel  
22 indicates that Jim was not having overt problems that became  
23 problems for others outside his life when he was a child?

24 A. That's right. He was -- he was being dishonest  
25 about some things to make himself look big or to avoid

1 responsibility at times, but the only thing -- plus the  
2 drinking, which people were not aware of. But those are the  
3 only things that I know, misbehavior in adolescence.

4 Q. Who else did you talk to from his long ago past?

5 A. I talked to Pam Sherman. I talked to -- I don't  
6 know what you mean by long ago. Certainly I talked to Tonya  
7 Thorp who was his sister, and she had seen some of the abuse  
8 directly that his father had dealt out.

9 Q. Uh-huh. Okay. So you've talked to a number of  
10 people that know about his life when he was with his mother  
11 originally?

12 A. Yes.

13 Q. And how he reacted when he and Donnie were put in  
14 the Buckner's Orphanage home?

15 A. Yes.

16 Q. And actually have you talked to people that have  
17 indicated to you he complained about the Tolars from a fairly  
18 early age, even right after he left the Tolar's?

19 A. Yes, some of the records indicate he didn't want to  
20 live with the Tolars anymore immediately after leaving it,  
21 and then Tracy Erwin and Tim Erwin who Tracy was Tracy  
22 Murphy, formally was the stepsister, if you will, the  
23 adoptive sister. She talked about the complaints he had made  
24 about his treatment at the Tolars and also Tim, her husband,  
25 Tim Erwin also talked about the complaints he made about the

1 treatment there, so that comes from an early age.

2 Q. All right. Did you learn anything about his  
3 treatment by the Murphys?

4 A. Yes.

5 Q. How did that home work? It looked like a good thing  
6 at first, did it not?

7 A. Correct.

8 Q. Jim was thrilled to death to get there?

9 A. Right.

10 Q. Did it turn out not to be quite as good as what he  
11 had anticipated?

12 A. Well, it really wasn't. The Murphys ultimately  
13 separated and divorced. In fact, they had divorced once  
14 already and remarried before he came, as I understand it.  
15 Then they divorced again toward the end of his high school  
16 years and that made him quite uncomfortable. He did not feel  
17 that Samantha Murphy treated him well, called him stupid,  
18 slapped him on occasion, that sort of thing. And then she  
19 disowned him essentially when he chose to live with Bob  
20 Murphy instead of with her at the end of that. And some of  
21 that may have been because he felt he could -- he could have  
22 more freedom with Mr. Murphy, but she really would not talk  
23 to him afterwards and that was confirmed by others that she  
24 disowned him more or less after he chose the father over her.

25 Q. Did -- and his choosing the father at the age of 17

1 or so years old would be fairly difficult for anyone. Would  
2 that not be so, if the father is working and they're kind of  
3 on their own, foot loose, fancy free, have transportation?

4 A. Well, it wouldn't be surprising, especially if the  
5 relationship with the mother was not good before that.

6 Q. Did you talk to Matt Murphy?

7 A. Yes.

8 Q. And who is he?

9 A. That again, is an adoptive brother. Son of Samantha  
10 and Bob Murphy.

11 Q. Did you ever learn that Jim felt that he was kind of  
12 like a pet or a toy when he first went to the Murphy house?

13 A. That's how he felt. Whether that was true or not,  
14 it's harder to tell.

15 Q. Do you know what that was based on?

16 A. I believe he felt that Samantha had adopted him to  
17 have a playmate for her son Matt. They dressed -- they were  
18 asked to dress similarly while they were growing up.

19 Q. And when that divorce occurred, did Jim feel any  
20 responsibility for that?

21 A. That I couldn't tell you.

22 Q. You don't?

23 A. I don't recall.

24 Q. Do you think Jim Murphy is a person who feels  
25 remorse and guilt for things that he does?

1 A. Yes.

2 Q. And what do you base that on?

3 A. I base that on the fact that not one of the 13  
4 people I talked to believed that he didn't have a capacity  
5 for remorse. Many of them reported affirmatively he does  
6 have a capacity, I know he does, he apologized, that sort of  
7 thing. There were a couple who in light of later events  
8 began to question that, but there was nobody that didn't feel  
9 he had a capacity for remorse and most of them would very  
10 affirmatively say, oh, yes, I know he has a capacity for  
11 remorse.

12 Q. In fact, from -- did you read the police reports and  
13 the things that were connected to this case?

14 A. Yes.

15 Q. Did you form an opinion about whether in fact his  
16 own guilt was used against him?

17 A. Yes.

18 Q. And what was that?

19 A. Well -- and there are a great many indicators of  
20 this, but a letter was written to him, signed by Cindy Hale,  
21 saying would you please tell us what happened to our sister?  
22 We want to put a memorial where she was killed. Did she  
23 suffer? That sort of thing. And he seemed to respond to  
24 that by expressing sorrow and remorse for what he had done.  
25 So that's here. I have some overheads on that if you want to

1 see it, but they absolutely did play on -- play on his  
2 sympathy and his capacity for remorse to get him to confess  
3 and talk about what had happened in that circumstance.

4 Q. And in fact he talked to them several times even  
5 after he had a lawyer?

6 A. Yes.

7 Q. Is that your understanding?

8 A. Yes.

9 Q. And he told them where Ms. Cunningham was because  
10 his friend Jason Bonham said, remember our friend that died  
11 and the animals came?

12 A. Yes.

13 Q. And all of these things would be an attempt --  
14 certainly what that -- their job is, is to find out what had  
15 happened in this case, but Jim responded every time, didn't  
16 he? As far --

17 A. As far as I can tell, he did respond to that, yes.

18 Q. You had mentioned the DSM IV, I think. Would you  
19 tell the jury what Axis II means?

20 A. We classify people according to clinical diagnosis,  
21 like depression, schizophrenic, anxiety disorder. Axis I is  
22 just a place to put a name for what's going on with  
23 somebody. Axis II is the personality structure or  
24 personality disorder. And there are some other Axis, too,  
25 but Axis II has to do with personality structure and



1 personality disorder.

2 Q. Okay. And from that is where you made your  
3 determination of the narcissism?

4 A. Yes.

5 Q. And the borderline personality disorder?

6 A. Yes.

7 Q. And the antisocial traits?

8 A. Yes.

9 Q. He also has polysubstance abuse, and is there a  
10 crossover between the substance abuse and the antisocial --  
11 antisocial qualities?

12 A. Yes, many people with substance abuse will engage in  
13 antisocial behavior.

14 Q. That's actually almost common sense, isn't it?

15 A. Absolutely. It's extremely, extremely common.

16 Q. What -- you did say there were antisocial traits on  
17 the part of Jim Murphy. Which of those have you observed,  
18 and how did you come to that information?

19 A. There were times he was irresponsible. He was  
20 working, according to probation, 40 to 60 percent of the  
21 time. Some of the time he wasn't. He seemed to want to be  
22 taken care of on -- on worker compensation so that -- having  
23 a parasitic kind of life-style, that may be a little  
24 aggressive, but perhaps taking advantage of the system, if  
25 you will, there may have been some of that there. And there

1 were some at times criminal acts which he engaged in like  
2 burglary of a vehicle and a habitation, I believe that he had  
3 been convicted for before and was on probation for that. He  
4 was also irresponsible at times with showing up for probation  
5 appointments. At other times he would show up and pay  
6 restitution.

7 Q. Can you think of any others?

8 A. There may be some. I don't think of any others  
9 right now.

10 Q. What about -- did you feel that he had any  
11 characteristics of posttraumatic stress disorder?

12 A. He did complain of some symptoms of posttraumatic  
13 stress disorder. That overlaps so much with depression, it  
14 was hard for me to tell whether that was present or not, and  
15 you have to presume that the particular stressor of sexual  
16 abuse in this case occurred and I wasn't sure whether that  
17 happened. It's possible he suffers from it, but it's hard  
18 for me to tell.

19 Q. And I think perhaps the diagnosis in one of his  
20 hospital stays was dissociative disorder; is that right?

21 A. Right.

22 Q. What -- what is that?

23 A. Well, that's the multiple personality that I was  
24 talking about.

25 Q. And you don't think that has any application to him?

1 A. I really don't.

2 Q. Now, he's made several attempts, whether strong ones  
3 or light ones I would say, to kill himself --

4 A. Yes.

5 Q. Are you aware of those episodes in his life?

6 A. Yes.

7 Q. I think we have a trying to shoot himself once in  
8 the face, pills, cutting himself in the jail. Do you know  
9 about those things?

10 A. Yes.

11 Q. Do you have an opinion about those in terms of  
12 whether or not he is attention seeking, he's guilty, he's  
13 trying to avoid consequences, he's manipulating? What would  
14 you say about those, and they may be different in each  
15 instance, I don't know.

16 A. It could be hard to tell. I expect there's a  
17 mixture of guilt, remorse, concern about himself, and a  
18 desire to make -- make the environment be different. That's  
19 how borderlines react. I'm so anxious, I want the  
20 environment to be different and I'll doing something dramatic  
21 to make the environment be different. I feel terrible. I'm  
22 going to have to change something. There's a mixture of all  
23 these motives going on. Like I said, there are many letters  
24 that he wrote, too, that reflect remorse. I think that's  
25 part of it, but I can't say that there's not a manipulative

1 angle, too, because borderlines make manipulative suicide  
2 attempts, so it's hard to distinguish out exactly what  
3 mixture of what is involved in these attempts.

4 Q. And you're aware that he did try to cut -- did cut  
5 his throat and his wrist when he was in the jail?

6 A. Yes.

7 Q. Do you consider that a manipulation?

8 A. It's very self-destructive. There may have been  
9 manipulative elements, but at the same time, it's very  
10 difficult to cut your own throat. And I don't -- I  
11 personally do not believe it's all manipulation, no remorse,  
12 no guilt about what's happened because he expresses it too  
13 consistently.

14 MS. LITTLE: I'll pass the witness.

15 THE COURT: Let's take a 10-minute break,  
16 Sheriff, for the benefit of the reporter.

17 THE BAILIFF: All rise.

18 THE COURT: Jury excused from the courtroom at  
19 this time.

20 (Jury excused from courtroom.)

21 THE BAILIFF: All rise.

22 (Jury returned to courtroom.)

23 THE COURT: Let the record reflect the jury is  
24 returning to the courtroom at this time.

25 Jurors may be seated.

1 Mr. Murphy, counsel, Dr. Crowder, you may be  
2 seated.

3 Defense may proceed.

4 The State may proceed.

5 MR. DAVIS: Yes, sir.

6 Cross-Examination

7 By Mr. Davis:

8 Q. Dr. Crowder, we've met prior to today, haven't we?

9 A. Yes.

10 Q. Dr. Crowder, would you tell us how many death  
11 penalty cases in Texas have you testified?

12 A. I couldn't tell you the number, maybe -- I'm just  
13 estimating, maybe 15 or so.

14 Q. Okay. Who have you testified for, the State or the  
15 defense, in those cases?

16 A. The defense.

17 Q. You've testified several times in Dallas County on  
18 death penalty cases, haven't you?

19 A. Yes, sir, I have.

20 Q. And again, that's always been for the defense,  
21 correct?

22 A. Correct.

23 Q. Okay. At times you have expressed opinions about  
24 future dangerousness, correct?

25 A. Yes.

1 Q. Kenneth Wayne Thomas, you testified on his behalf,  
2 didn't you?

3 A. Yes.

4 Q. Kenneth Wayne Thomas was convicted of actually  
5 breaking into the home of --

6 MR. BYCK: Your Honor, we're going to object  
7 to going into the facts behind any of the offenses that the  
8 doctor is talking about.

9 THE COURT: Objection is overruled.

10 Q. (By Mr. Davis) Isn't it true that Kenneth Wayne  
11 Thomas broke into the home of Mr. and Mrs. Fred Finch?

12 A. Yes.

13 Q. That he stabbed and killed both of them?

14 A. Yes.

15 Q. Can you tell the members of the jury what, if  
16 anything, did Kenneth Wayne Thomas do to Mr. Fred Finch after  
17 he killed him?

18 A. I believe he was sodomized, if I'm not mistaken.  
19 This was the mid 80's, I think.

20 Q. Penetrated him anally, didn't he?

21 A. Yes.

22 Q. In that case, you said that Kenneth Wayne Thomas was  
23 not a future danger, correct?

24 A. I said with treatment he would be a declining danger  
25 is what I said.

1 Q. You testified on behalf of Mario Reed King, didn't  
2 you?

3 A. I remember I evaluated him, and I can't recall  
4 testifying for him, though.

5 Q. Okay. Do you remember what Mario King was convicted  
6 of? Let me ask you, do you remember that he stabbed and  
7 killed both his parents?

8 A. I believe that's true.

9 Q. Do you remember that after he killed his mother, he  
10 cut her finger off to get a ring?

11 A. I believe that's true, also.

12 Q. You also testified on behalf of Robert Atworth,  
13 didn't you?

14 A. Yes.

15 Q. And Robert Atworth actually robbed and shot an  
16 individual here in Dallas County, didn't he?

17 A. Correct.

18 Q. Slashed his torso?

19 A. Yes.

20 Q. And then do you remember that he cut off the  
21 victim's finger and put it in his refrigerator?

22 A. Yes.

23 Q. And you said that Robert Atworth was not a future  
24 danger, either, correct?

25 A. Unlikely, yes.

1 Q. Do you remember testifying on behalf of a woman by  
2 the name of Kimberly McCarthy?

3 A. Yes.

4 Q. I believe that's the first time that you and I met  
5 on a case such as this one, correct?

6 A. That may be. I don't remember the first time.

7 Q. Do you remember that Kimberly McCarthy one morning  
8 walked across the alley to the home of her 70-year-old  
9 neighbor, a Dorothy Booth? Do you remember that?

10 A. Yes.

11 Q. That she forced her way into Ms. -- or Dr. Booth's  
12 home and stabbed her repeatedly?

13 A. I do.

14 Q. And do you also remember that while Dr. Booth was  
15 still alive, that she cut off her finger to get a ring?

16 A. Yes.

17 Q. Do you remember also that Kimberly McCarthy some ten  
18 years before had actually stabbed and killed two elderly  
19 women in South Dallas who were both friends of hers?

20 A. True.

21 Q. And you testified in that case that Kimberly  
22 McCarthy was not a future danger, didn't you?

23 A. Right.

24 Q. And you also testified on behalf of Robert Wayne  
25 Harris. Do you remember that?



1 A. Yes.

2 Q. And again, Robert Wayne Harris shot and killed five  
3 coworkers at a car wash in Irving; is that right?

4 A. Yes.

5 Q. He also killed a young woman some months earlier and  
6 left her in a field, correct?

7 A. True.

8 Q. You told the jury in Dallas County that you didn't  
9 consider Robert Wayne Harris to be a future danger either,  
10 right?

11 A. No, I didn't say that. I didn't testify about  
12 future dangerousness.

13 Q. You testified on mitigation.

14 A. Mitigation, not future dangerousness.

15 Q. Right. And you said there were mitigating  
16 circumstances in that case on behalf of Robert Wayne Harris,  
17 right?

18 A. Absolutely.

19 Q. Robert Wayne Harris is on death row now, right?

20 A. Yes.

21 Q. Kimberly McCarthy is on death row right now?

22 A. All of those people are.

23 Q. Doctor, would it be fair to say that you have  
24 problems with the way Texas applies its death penalty  
25 statute?

1 A. In some cases.

2 Q. Well, as a matter of fact, your feelings are such  
3 that you've already testified previously, haven't you, that  
4 you -- in your opinion, you believe it would be illegal to  
5 assess a death penalty against any of the women on death row?

6 A. I think you may have misinterpreted that a little  
7 bit. What I showed in Kimberly McCarthy's trial is that not  
8 one woman who had ever been confined on death row had  
9 committed a disciplinary offense for being dangerous. She  
10 hadn't -- no woman on death row in Texas had ever hurt  
11 anybody at that time. I don't know what's happened since.  
12 And I also told you that -- Karla Fay Tucker was executed  
13 after 14 years on death row without committing an offense of  
14 violence. What troubled me was that the Texas death penalty  
15 statute says someone has to be a future danger to be put to  
16 death and that people that were not a future danger were  
17 being executed in those cases. That's what -- that's what  
18 troubled me about women being executed, and you were aware of  
19 this.

20 Q. Well, let me just refresh your memory. Do you  
21 remember me asking you in the case of Kimberly McCarthy: Let  
22 me understand. See if I can understand this. You don't  
23 think that any of these women pose such a future danger that  
24 they should be assessed the death penalty, do you?

25 Do you remember your answer in that case?

1 A. I expect I said no, because they had no  
2 disciplinaries.

3 Q. No, sir. Your answer was: No, that would be  
4 illegal in my opinion.

5 Do you remember that being your answer?

6 A. Well, that could well be.

7 Q. Are you charging for the work that you've done in  
8 this case, Doctor?

9 A. Yes.

10 Q. What are you charging?

11 A. \$175 an hour, \$200 an hour for testimony.

12 Q. Do you know to date how many hours that you've  
13 worked in this matter?

14 A. It's probably around 30 or so hours.

15 Q. In the 13 collateral interviews that you've done,  
16 Doctor, did you interview any members of the Garland Police  
17 Department?

18 A. No, looked at some records.

19 Q. Van Zandt County Sheriff's Office, did you interview  
20 any people from that department?

21 A. Just records.

22 Q. How about any member of the Dallas County Sheriff's  
23 Office?

24 A. No.

25 Q. Jail nurses?

1 A. No.

2 Q. I know that you've reviewed records, but did you  
3 make any attempt to talk with any of the physicians that  
4 treated Jedidiah Murphy?

5 A. No, I didn't talk with them. I reviewed their  
6 records.

7 Q. Doctor, would any of your opinions change if you  
8 learned that the defendant put a gun to the head of a young  
9 woman and asked her, are you afraid to die?

10 A. Well, my opinions of -- I'm sorry.

11 MS. LITTLE: I was just going to object to  
12 whether we're going to the background and the diagnosis of  
13 Jim Murphy, as opposed to some future danger. I'd object to  
14 the question.

15 THE COURT: Objection is overruled.

16 A. My diagnosis doesn't change. You take alcohol away,  
17 and there's much less danger here. That's what a lot of the  
18 problem is. There are many other problems, too. But when  
19 you don't have alcohol and you don't have the other  
20 incentives and you don't have a woman and you don't have  
21 somebody that's rejected him, you have many fewer incidents  
22 of aggression on his part.

23 Q. (By Mr. Davis) So your opinion -- diagnosis  
24 wouldn't change?

25 A. No.

1 Q. If you learned that the defendant kidnapped a nurse  
2 in broad daylight in Arlington and refused the offer of money  
3 and started to drive off with her, would that change any of  
4 your opinions or diagnosis?

5 A. No, it wouldn't. I'm aware of these allegations,  
6 and it wouldn't change any diagnosis or opinions.

7 Q. And if you learned that the defendant robbed a  
8 65-year-old woman in Wichita Falls, same question, would that  
9 change any of your opinions or diagnosis?

10 A. No.

11 Q. Doctor, I know that you were asked to review some  
12 records from the children shelter in Van Zandt County. Did  
13 Ms. Little provide those records to you?

14 A. Yes.

15 Q. Do you know whether or not you got a complete set of  
16 the records or not?

17 A. I believe there was an affidavit on them, but the  
18 papers have now been separated. I'm not sure.

19 Q. Well, if it turned out there were additional records  
20 that were not provided to you from that center, do you think  
21 that some of those additional records might change your  
22 opinions or diagnoses in this case?

23 A. It's always possible, depending on what they say.

24 Q. Did I understand you to say, Doctor, that you  
25 thought the boys adjusted well once they got to the center?

1       A.    They calmed down according to the record I  
2 reviewed.  They calmed down -- well, this is Donnie, of  
3 course.  He didn't have as many problems in the Fruitvale  
4 schools after a time.

5       Q.    Well, do you know, Doctor, that these two boys were  
6 returned to the Tolar home some 17 days after they arrived at  
7 the center?

8       A.    I believe I did read something along those lines.

9       Q.    And do you also see that they were returned to the  
10 Tolars because in Donnie's case he was completely out of  
11 control?  That's the reason why they had to send him back to  
12 the Tolar home for a period of time?

13       A.    That would be when he left the Kings, I believe.  I  
14 think that's true.

15       Q.    Right.  And do you recall that with regards to this  
16 defendant, that again he was returned to the Tolars, too,  
17 because he was out of control?

18       A.    They sometimes refer to them together.  All I recall  
19 is the Tolars saying he wasn't much of a problem, it was  
20 Donnie.

21       Q.    Well, have you seen a record with the date of  
22 1-17-87 that says return to parents, so out of control that  
23 we could not continue to keep him?  Have you been shown that  
24 record from the children's shelter?

25       A.    I believe I did see it.  May I see it now?

1 Q. Yes, sir, be happy to.

2 Do you know when you were shown that record?

3 A. Yeah, I had it in the records. Which one of these?

4 Q. I believe the second page. I believe --

5 A. This one right here?

6 Q. This one right here.

7 A. Sorry. Okay. They want to relinquish their  
8 parental rights. The children don't want to live with them  
9 anymore. Return to parents, so out of control that we  
10 can't -- cannot continue to keep him.

11 Q. Yeah. The reference to the parents relinquishing  
12 that's with regards when they brought them on 1-1-87.

13 A. Right.

14 Q. They're returning to the Tolar home because he's out  
15 of control is 1-17-87. Did you have that record?

16 A. Yes, I did have this record. Absolutely.

17 Q. That certainly would indicate these two boys -- at  
18 least this defendant didn't adjust very well when he got over  
19 there to that home, did he?

20 A. He adjusted very poorly when he would leave one  
21 circumstance for another. He had already been placed in four  
22 or five different homes by that time and it was very  
23 disruptive to him. To have a change of circumstances was  
24 hard for him to handle.

25 Q. Well, you know, too, he was physically attacking his

1 house parent when he got over there?

2 A. Screaming and kicking, yes.

3 Q. Showed that to be good adjustment?

4 A. Well, depends on how long it lasts. One episode of  
5 screaming and kicking, I wouldn't say is enough to say it's a  
6 poor adjustment.

7 Q. These two boys that had allegedly been abused in the  
8 Tolar home, there's no record that they refused to go back to  
9 that home, is there?

10 A. Says they didn't want to go back to the home. You  
11 just read it.

12 Q. No, sir. On the record from Jim Murphy dated  
13 1-1-87: Parents brought children here, stating they wanted  
14 to relinquish their parental rights. The children did not  
15 want to live with them anymore.

16 That's not the reference to 1-17 when they were  
17 taken back to the Tolar's. Have you seen any reference of  
18 either of these two boys said, hey, we don't want to go back  
19 there to that awful home where we got abused. We're not  
20 going back to the Tolar's.

21 Have you seen any reference at all in this  
22 children's shelter of these two boys refusing to go back to  
23 that home?

24 A. It said they didn't want to. I'm not sure what you  
25 mean by refusing. They didn't have the power to refuse.



1 MR. DAVIS: Could I?

2 THE COURT: You may.

3 Q. (By Mr. Davis) Doctor, again, that statement about  
4 these boys not wanting to go back, sir, that was made on  
5 1-1-87, wasn't it?

6 A. Sure.

7 Q. Okay. What I'm asking you is, is there any written  
8 record that either of these two boys voiced any refusal to go  
9 back on 1-17-87?

10 A. You mean 16 days later did they change their mind  
11 and want to go back? I don't know of any change of mind in  
12 that period of time.

13 Q. And to your knowledge both of them then went back to  
14 the Tolar home for a period of time?

15 A. For a period of time.

16 Q. Doctor, in your testimony I didn't hear you mention  
17 any of the tests that were conducted on the defendant. There  
18 were several tests that you ordered to be administered on  
19 this defendant, correct?

20 A. I did order several tests.

21 Q. First of all, you asked Dr. Monroe Cullum to perform  
22 certain neuropsychological tests, didn't you?

23 A. Yes.

24 Q. And Dr. Monroe Cullum is with the Department of  
25 Neurology at Southwestern; is that right?

1 A. No, he's a neuropsychologist.

2 Q. That's someone that you have a lot of confidence in?

3 A. Oh, sure.

4 Q. And what was the purpose of that testing?

5 A. It was to rule out any central nervous system  
6 damage.

7 Q. And how would that be relevant in a case such as  
8 this one?

9 A. Demonstrable central nervous system damage would  
10 make me worry that that was the basis of some kind of violent  
11 behavior.

12 Q. And as a matter of fact, the neuropsychological  
13 tests done by the doctor showed no evidence of central  
14 nervous system damage, right?

15 A. That's correct.

16 Q. And also revealed that this individual has above  
17 average reasoning and problem solving skills?

18 A. That's probably true. He seems bright.

19 Q. Did you also order that an EEG be performed on this  
20 defendant?

21 A. Yes.

22 Q. What is -- what kind of test is that, Doctor?

23 A. That measures the electrical brain activity.

24 Essentially wires are attached to the head, and there's a  
25 monitoring of the electrical potentials in the central

1 nervous system.

2 Q. Why would you want that kind of test done in this  
3 particular case? What were you looking for?

4 A. What I was looking for, again, is any central  
5 nervous system damage or abnormality on the EEG.

6 Q. Would that also help you to confirm a history of  
7 seizures, for instance?

8 A. Yes, absolutely.

9 Q. And in this case what was the result of that EEG?

10 A. That was within normal limits.

11 Q. Normal limits?

12 A. Yes.

13 Q. No abnormalities noted on that test?

14 A. Correct.

15 Q. Finally, did you ask that an MRI be done on the  
16 defendant?

17 A. Yes, sir, I did.

18 Q. And again, if you could just briefly tell us what an  
19 MRI is?

20 A. Kind of complicated. It has to do with making  
21 certain molecules or atoms vibrate in a magnetic field. And  
22 that is the vibrations are then picked up to look at  
23 structures in the brain, so it's a structural test to look at  
24 whether there's a lesion, whether there are stroke sites,  
25 which I didn't expect in this case, but a tumor or that sort

1 of thing might show up on this kind of a test.

2 Q. Okay. So in this case you were looking at possible  
3 brain damage probably as -- possibly as an explanation for  
4 this man's behavior and attitudes?

5 A. Yes.

6 Q. And in fact this MRI showed no brain damage, did it?

7 A. That's correct.

8 Q. So as I understand, the neuropsychological test, no  
9 evidence of central nervous system damage, right?

10 A. Correct.

11 Q. The EEG was normal?

12 A. Correct.

13 Q. The MRI showed no brain -- not brain damage either,  
14 did it?

15 A. That's true.

16 Q. Doctor, when you talked with Terry Tolar, as I  
17 understood your testimony, he denied any abuse having  
18 occurred in that home with regards to this defendant, right?

19 A. That's true.

20 Q. You mention a letter that was written or used by the  
21 Garland Police Department at some point after the defendant's  
22 arrest. Since you didn't talk with any members of the  
23 Garland Police Department, you haven't talked with Matt  
24 Myers, the lead detective in this case, have you?

25 A. No, I have not.

1 Q. You don't know what his feelings are about the  
2 genuineness of the defendant's responses, do you? About what  
3 Detective Myers' feelings are, whether this defendant was  
4 being genuine and honest at the time he made those responses?

5 A. I'm looking for who it was that talked about him  
6 lowering his head when he talked about this event and seeing  
7 if that's Myers, and I think it may be Gary Rose so it's not  
8 Mr. Myers. I don't know what his feeling was.

9 Q. Well, you know Detective Myers has been here all  
10 day, don't you?

11 A. No.

12 Q. Been asked by the defense to be present yesterday  
13 and today?

14 A. Nope.

15 Q. So whether Detective Myers believes the defendant  
16 was being genuine and honest, you simply don't know?

17 A. Nope, don't know what he believes.

18 Q. Doctor, I want to ask you with regard to Bertie  
19 Cunningham, what emotions would you expect -- expect her to  
20 experience just prior to her death in this particular case?

21 A. If she was aware of what was happening, it was not  
22 sudden, then I would expect her to experience a lot of fear,  
23 a lot of anxiety, and there's usually thoughts of loved ones  
24 in that kind of a situation.

25 Q. Okay. So you'd expect her to feel a great deal of

1 fear?

2 A. Yes, I would.

3 Q. Would you expect her to have a sensation of being  
4 out of control?

5 A. I would.

6 Q. Panic?

7 A. Could well be.

8 Q. And would you expect Ms. Cunningham just prior to  
9 her death to go through a situation where she thinks back  
10 over her life to what she's done in her lifetime?

11 A. Some people report that, yes.

12 Q. Thank you, Doctor.

13 MR. DAVIS: That's all I have, Your Honor.

14 MS. LITTLE: Can we have just a moment, Your  
15 Honor.

16 THE COURT: You may.

17 Redirect Examination

18 By Ms. Little:

19 Q. Dr. Crowder, there was some discussion earlier about  
20 a Hare test, are you familiar with that?

21 A. Yes.

22 Q. Is it also known as a psychopathy checklist?

23 A. Yes, it is.

24 Q. How many questions --

25 THE COURT: Just a moment. Ms. King, for

1 purpose of the record, Hare is H-a-r-e.

2 Q. (By Ms. Little) How many questions or how many  
3 numbers of statements are there on that checklist?

4 A. There are 40 criteria.

5 Q. What is the validity of that test?

6 A. This is a kind of a long question. It's good for  
7 predicting dangerousness outside prison settings. Some  
8 people feel it's good inside. Other people feel it's  
9 relatively poor or inadequate in present prison settings  
10 because there's so much containment of the person. There was  
11 a meta-analysis done recently in which the authors questioned  
12 the value of the Hare to predict that a person would be  
13 dangerous inside an institution.

14 Q. All right. And in fact was there a case of a Robert  
15 Edwards?

16 A. I think you mean Robert Atworth?

17 Q. Yes, Atworth.

18 A. Yes.

19 Q. What happened in that case?

20 A. That was a case that Mr. Davis just referred to.  
21 There was evidence given about the Hare psychopathy checklist  
22 and its elevation predicting the person would be a future  
23 danger. Now, Mr. Atworth was executed after two years. I  
24 saw him to determine his competence to be executed, and I  
25 felt he was competent. And he in fact gave up all of his

1 appeals. There was a prediction by the prosecution expert  
2 that the person would be a future danger, and yet later  
3 investigation by a defense investigator in another case  
4 revealed in fact he had not been a future danger.

5 Q. In the penitentiary?

6 A. In the penitentiary. This is what gives me -- I  
7 just want to say this is what gives me some misgivings about  
8 things, that the prediction of dangerousness is not a very  
9 exact science as applied and that there are a number of what  
10 we call false positives in these cases and that's what --  
11 that's what bothers me a great deal.

12 Q. And how does a false positive occur?

13 A. Think of a medical test. The medical test is for  
14 say high blood pressure. This happens sometimes with what we  
15 call white coat hypertension. You come into the doctor's  
16 office. You're afraid he's going to diagnosis you with  
17 something. He had Italian food for lunch and his garlic  
18 breath is bothering you. You're blood pressure will go up.  
19 He may diagnose you as having high blood pressure because  
20 your blood pressure was momentarily elevated. It's a false  
21 positive because if you're not having to experience the  
22 garlic breath and the fear of being diagnosed and not liking  
23 the needles in the doctor's office, your blood pressure is  
24 not high. That's a false positive.

25 In this context what we talk about is the false



1 positives of killing people who are not a future danger. And  
2 the statistics are relatively poor for indicating that people  
3 should be executed in many cases. Now, there are some people  
4 that cannot be kept safe in prison, but when you're doing 40  
5 years without the possibility of parole, a lot of people are  
6 not a future danger and that's what troubled me in some of  
7 these cases. So with false positives, you're killing people  
8 that don't need to die.

9 In 1972 the U.S. Supreme Court acquitted or commuted  
10 sentences to life of 588 people who had been sentenced to  
11 death in the United States. Some of these people were  
12 released. Others remained in prison. How many murders were  
13 committed by these 588 people who had gotten the death  
14 penalty? Six. You had to kill 582 people who would not  
15 commit a further murder to kill six who would commit a  
16 further murder. That's the problem with false positives.

17 And Mr. Atworth was indeed a false positive that  
18 came out of this prosecutor's office. That's what troubles  
19 me about the death penalty.

20 The other thing is when no one woman on death row  
21 ever committed a violent offense in confinement and when  
22 someone like Karla Fay Tucker can be executed after 14 years  
23 with one of the jurors and one of the prosecutors saying we  
24 do not believe that this person should be executed anymore,  
25 you have another problem with false positives. She wasn't a

1 future danger as the jury had said she would be. That's  
2 troubling to me. That's why I think it's illegal to kill  
3 people that aren't a future danger. That's what the Texas  
4 law says.

5 Q. And you've been sought out by defense lawyers to  
6 testify or to help work on cases times when you were not able  
7 to do anything that would be of any benefit, where you were  
8 not ultimately called to testify or used in the case; is that  
9 correct?

10 A. Yes, I've seen over 40 capital murder defendants.  
11 That's why I've only testified in 15 or 20. Don't hold me to  
12 that number, but it's not nearly all of them because I didn't  
13 feel I had anything that was going to help them in their  
14 defense in those cases.

15 Q. And all of the future danger talk that's been  
16 discussed about your previous testimonies, this was future  
17 danger in the penitentiary?

18 A. Yes.

19 Q. These were people that were either going to be  
20 executed or they were going to spend whatever number of years  
21 the law required in prison?

22 A. Yes, absolutely.

23 Q. And back to these records of the Van Zandt  
24 Children's Center. These boys were children still at that  
25 time; is that right?

1 A. Yes.

2 Q. And so if they acted out, it's not the same as going  
3 and robbing a bank or something? This is a child acting out?

4 A. Right. Out of the insecurity, I think, and the  
5 instability of the environment.

6 MS. LITTLE: That's all I have. Thank you.

7 Recross-Examination

8 By Mr. Davis:

9 Q. Doctor, in fact you were hired and you actually  
10 anticipated rendering opinions concerning future  
11 dangerousness in this case, didn't you?

12 A. Yes.

13 Q. And yet on direct examination, as I recall, you  
14 weren't asked a single question about future dangerousness  
15 with regards to Jedidiah murder, were you?

16 A. That's accurate.

17 Q. When you look at Special Issue Number 1 and you see  
18 the word "society," as I take it, you really only view that  
19 as being prison, don't you?

20 A. That's where the person is going to be.

21 Q. Uh-huh. So if you're looking at it, you're going to  
22 limit it to prison. You're not going to consider the free  
23 world to be part of society with regards to Special Issue  
24 Number 1?

25 A. Not if these people are going to be confined. It's

1 irrelevant to them.

2 Q. Do you remember when I first questioned you about  
3 what your opinions would be in this case? Do you remember I  
4 asked you in Mr. Murphy's case, would your conclusion be that  
5 he will not pose a future threat? Do you remember me asking  
6 you that question at the 705 hearing?

7 A. Yes, I do.

8 Q. Do you remember your answer at that time to be:  
9 With regards to Mr. Murphy, I can't say that he will not pose  
10 a future threat. What I can say is that the odds are against  
11 it. You can't predict necessarily for one individual what  
12 that one person will do.

13 Do you remember that being your answer?

14 A. And that's absolutely true for all of us here. We  
15 can't absolutely predict with regard to one individual.

16 Q. Uh-huh. So as far as you're concerned, when it  
17 comes to Mr. Murphy, we just cannot predict what he's going  
18 to do in the future?

19 A. We can look at the odds though, and the odds are  
20 against his future dangerousness in prison.

21 Q. Based on all the studies that you've researched?

22 A. Yes.

23 Q. Have you conducted any of those studies yourself?

24 A. Nope.

25 Q. So you're just simply relying on research that other

1 people have done in this area?

2 A. That's the method of our profession, is to rely on  
3 research from journals.

4 Q. And many of these people that conduct this research  
5 have a real problem with the Texas death penalty, don't they?

6 A. Oh, I suppose -- I suppose some of them do.

7 Q. Uh-huh. James Markworth does, doesn't he?

8 A. Yes, I think coming out of his analysis of the  
9 statistics.

10 Q. John Sorenson has a problem with it, doesn't he?

11 A. I don't know if he individually and personally does  
12 or not.

13 Q. Do you remember me asking you whether you -- whether  
14 you would express any opinion about whether this man will  
15 pose a threat or a risk outside of a prison in the future?  
16 Do you remember me asking you that question?

17 A. I don't recall that specifically. I know we dealt  
18 with that issue.

19 Q. Okay.

20 MR. DAVIS: May I approach, Your Honor.

21 THE COURT: Is this the June 14th hearing  
22 outside the jury's presence?

23 MR. DAVIS: It is, Your Honor.

24 Q. (By Mr. Davis) Dr. Crowder, let me show you a  
25 transcript of that hearing, 705 hearing that we had in this

1 court. Referring to page 5, question there: Will you  
2 express any opinion about whether he will pose a threat or  
3 risk outside of a prison in the future?

4 Is that the question that I asked you?

5 A. Yes.

6 Q. And your answer was, what?

7 A. I don't anticipate being asked that on direct.

8 Q. You didn't anticipate Ms. Little asking you that  
9 question, whether this man is going to pose a threat outside  
10 the prison, right?

11 A. Surely.

12 Q. Then I asked you: Have you formed an opinion on  
13 that subject.

14 And you said that you had, right?

15 A. Yes.

16 Q. And I asked you: What is your opinion?

17 And, sir, would you tell the members of the jury  
18 what your answer was to that question?

19 A. I said: On the outside I would be concerned about  
20 him.

21 Q. Thank you, Doctor.

22 A. Sure.

23 MR. DAVIS: No further questions.

24 Further Redirect Examination

25 By Mr. Little:

1 Q. And at the very least, Dr. Crowder, on the outside  
2 is nonexistent for at least 40 years?

3 A. Well, that's absolutely true. We've got a 40-year  
4 minimum before eligibility for parole so he would be eligible  
5 for Social Security about the same time he's eligible for  
6 parole.

7 MS. LITTLE: Thank you.

8 Recross-Examination

9 By Mr. Davis:

10 Q. Dr. Crowder, have you ever heard of the Texas 7?

11 A. Yes, I have.

12 Q. Do you know how many of those men were serving life  
13 sentences before they escaped from the Connelly Unit and came  
14 up here --

15 MS. BALIDO: Judge, I'm going to object to  
16 relevance.

17 THE COURT: Overruled. It's been opened up.

18 Q. (By Mr. Davis) Do you know how many of those men  
19 were serving life sentences before they escaped and came up  
20 here and shot and killed Officer Aubrey Hawkins of the Irving  
21 Police Department?

22 A. At least two.

23 Q. Well, the man who is purported to be the ring  
24 leader, George Rivas, do you know how many life sentences  
25 that man was serving when he led that escape?

1 A. 18.

2 Q. 18 life sentences before he escaped. Do you know  
3 what sort of sentence that Michael Rodriguez was serving?

4 A. He was on a life sentence for murder, I believe.

5 Q. Michael Rodriguez actually was serving life for  
6 capital murder, which would mean he would have a flat 40  
7 years to do before under your assumption he would pose any  
8 threat on the outside world, right?

9 A. I agree with you. There are 150,000 people in TDC.  
10 Seven of them escaped. There's about a 1 in 21,000 or so  
11 chance that Mr. Murphy would escape. That's true.

12 Q. Donald Newberry, do you know he was serving a  
13 99-year sentence for aggravated robbery when he escaped? Do  
14 you know that?

15 A. I don't know the other specifics sentences.

16 Q. Joseph Harper who escaped, do you know he was doing  
17 50 years for murder when he left that institution?

18 A. I can believe you.

19 Q. Larry Harper was doing 50 years for aggravated  
20 robbery, for aggravated rape when he escaped. Patrick Murphy  
21 was doing 50 years for aggravated rape. And Randy Halprin  
22 was serving 30 years for injury to a child before he escaped.  
23 Correct?

24 A. That's true.

25 Q. And I assume that if I had asked you your opinions



1 about these individuals, that you would have said that these  
2 men don't pose any threat in the free world until they're  
3 eligible for parole and released into the free world,  
4 wouldn't you?

5 A. I would have said the odds were against it, and I  
6 would have been right about 21,000 times to your one time  
7 being right saying that they were.

8 Q. You would have been wrong on all seven counts of the  
9 Texas 7, wouldn't you?

10 A. Seven out of 150,000 predictions I would have been  
11 wrong.

12 Q. You would have been wrong on every one of the men  
13 who escaped out of the unit that day.

14 A. 7 out of 150,000 times, yes.

15 MR. DAVIS: No further questions.

16 Further Redirect Examination

17 By Ms. Little:

18 Q. Dr. Crowder, has there been anything that you've  
19 seen through the records you've looked at, the interviews,  
20 the knowledge of the people that you've talked to, that would  
21 indicate to you that -- in fact, you had Jim sent over to  
22 have an MRI done at a different facility, didn't you?

23 A. Yes.

24 Q. And he had other tests done outside of this  
25 building, outside of the jail?

1 A. He did.

2 Q. And you went to see him and saw him. He didn't  
3 storm past you or anything, did he?

4 A. No.

5 Q. Have you seen any signs from anything you know about  
6 him that he would be a great risk for escape?

7 A. Not particularly. Again, very few people escape.  
8 Are there a few? Yes, they are.

9 There's another important thing to point out here.  
10 He was caught with razors on two occasions. On one occasion  
11 he chose to hurt himself. On neither occasion did he choose  
12 to hurt anyone else. He had every opportunity to do so. I  
13 think you have to consider real carefully. We've done the  
14 experiment with him for a number of months now, and there's  
15 really not any serious assaultiveness. There was one  
16 occasion on which he stiffened his arms and was unhappy  
17 because they didn't take him to use the rest room by  
18 himself. They wrestled him to the ground. No one was hurt.  
19 I don't think you can say based on his record in jail, where  
20 he had access to weapons, that he is much of a danger. It  
21 just doesn't seem plausible to me.

22 MS. LITTLE: Thank you.

23 Further Recross-Examination

24 By Mr. Davis:

25 Q. Do you know why he stiffened his arms and required

1 physical restraint over there in the George Allen Building?

2 A. Yes.

3 Q. Why was that?

4 A. Well, as I said, he didn't want to use the rest room  
5 in front of other people. He has an inhibition about that.  
6 He hadn't used the rest room for a long time, and he  
7 wanted -- wanted to use the rest room alone. That's as he  
8 told me.

9 Q. That's as he told you?

10 A. Yes.

11 Q. He didn't tell you it was because he refused to talk  
12 with a Bill Parker who had been hired by the defense to  
13 interview him over on the 7th floor?

14 A. I'm not aware that he refused to talk to Mr. Parker.

15 Q. You know that he feigned a seizure that day, too,  
16 don't you?

17 A. I would have to see the record because I know of one  
18 instance in which he had what appears to be a panic attack.

19 Q. Well, you didn't talk with any of the jail personnel  
20 about that incident, did you?

21 A. No, I read the record.

22 MR. DAVIS: That's all, Judge.

23 THE COURT: Thank you, Dr. Crowder. You are  
24 excused.

25 Ladies and gentlemen, we'll stand in recess,

1 tomorrow morning 9:00 a.m.

2 THE BAILIFF: All rise.

3 (Jury excused from courtroom.)

4 THE COURT: Counsel, do we need any more 705  
5 before the next witness?

6 MR. DAVIS: Yes, sir, I believe we do.

7 THE COURT: 8:45 for us, then.

8 THE COURT: Jury has been excused.

9 Visitors of the gallery, you may be seated or  
10 excused.

11 (Recess of proceedings.)

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Reporter's Certificate

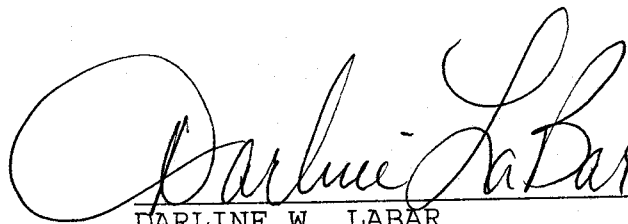
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 13th day of November, A.D., 2001.



DARLINE W. LABAR  
Official Court Reporter  
194th Judicial District Court  
Dallas County, Texas  
(214) 653-5803

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